# Chapter 38

## CIVIL SERVICE AND RETIREMENT

## STATE EMPLOYEES' RETIREMENT ACT

### Act 240 of 1943

AN ACT to provide for a state employees' retirement system; to create a state employees' retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; to prescribe and make appropriations for the retirement system; and to prescribe penalties and provide remedies.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1957, Act 232, Eff. Sept. 27, 1957 ;-- Am. 1984, Act 3, Eff. May 1, 1984 ;-- Am. 1989, Act 297, Imd. Eff. Jan. 3, 1990 ;-- Am. 1996, Act 389, Imd. Eff. Sept. 30, 1996 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 99, Imd. Eff. Mar. 27, 2002

*The People of the State of Michigan enact:*

### 38.1 Short title; meanings of words and phrases.

Sec. 1.

(1) This act shall be known and may be cited as the "state employees' retirement act".

(2) For the purposes of this act, the words and phrases defined in sections 1a to 1i have the meanings ascribed to them in those sections.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- Am. 1947, Act 351, Eff. Oct. 11, 1947 ;-- Am. 1948, 1st Ex. Sess., Act 41, Imd. Eff. May 10, 1948 ;-- CL 1948, 38.1 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1958, Act 207, Imd. Eff. May 5, 1958 ;-- Am. 1962, Act 233, Eff. Mar. 28, 1963 ;-- Am. 1968, Act 111, Eff. Nov. 15, 1968 ;-- Am. 1981, Act 157, Imd. Eff. Nov. 19, 1981 ;-- Am. 1982, Act 450, Imd. Eff. Dec. 30, 1982 ;-- Am. 1985, Act 151, Imd. Eff. Nov. 12, 1985 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1988, Act 338, Imd. Eff. Oct. 18, 1988 ;-- Am. 1990, Act 119, Eff. Apr. 1, 1991 ;-- Am. 1990, Act 177, Imd. Eff. July 2, 1990 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995
**Admin Rule:** R 38.11 and R 38.12 of the Michigan Administrative Code.

### 38.1a Definitions; A, B.

Sec. 1a.

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the employees' savings fund, together with regular interest on that account.

(2) "Actuarial cost" means an amount that shall be paid, except as otherwise specifically provided by this act, by a member to purchase additional service credit as allowed under this act. Actuarial cost shall be computed as provided in section 17j.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member. An annuity shall be paid in equal monthly installments.

(4) "Annuity reserve" means the present value, computed upon the basis of mortality and other tables adopted by the retirement board, of all payments to be made on account of an annuity, or benefits in lieu of an annuity, granted to a member under this act.

(5) "Appointing authority" means the departmental officer who has the responsibility of making appointments and handling all other personnel transactions affecting the employees in the agency that the officer represents.

(6) "Banked leave time program" means the part B annual leave hours within the annual and sick leave program

for state employees 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 or qualified participant in exchange for additional part B annual leave hours.

**History:** Add. 1968, Act 111, Eff. Nov. 15, 1968 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1998, Act 205, Eff. Aug. 1, 1998 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004

**38.1b Definitions; B, C.**

Sec. 1b.

(1) "Beneficiary" or "disability beneficiary" means a person other than a retirant who receives a retirement allowance, pension, or other benefit provided by this act.

(2) "Compensation" means the remuneration paid a member on account of the member's services rendered to this state. If a member's remuneration is not paid totally in money, the retirement board shall employ the maintenance-compensation schedules established from time to time by the civil service commission. Compensation does not include any of the following:

(a) Remuneration paid in lieu of accumulated sick leave.

(b) Remuneration for services rendered after October 1, 1981, payable at retirement or termination under voluntary or involuntary pay reduction plan B, in excess of the amount the member would have received had the member been compensated for those services at the rate of pay in effect at the time those services were performed.

(c) Payment for accrued annual leave at separation in excess of 240 hours.

(d) Remuneration received by an employee of the department formerly known as the department of mental health resulting from severance pay received because of the deinstitutionalization of the department formerly known as the department of mental health resident population.

(e) Remuneration received as a bonus by investment managers of the department of treasury under the treasury incentive bonus plan first approved by the civil service commission on February 11, 1988, pursuant to section 5 of article XI of the state constitution of 1963.

(f) Remuneration received as a bonus or merit payment by assistant attorneys general in the department of attorney general under the merit pay plan approved by the civil service commission on January 19, 1990, pursuant to section 5 of article XI of the state constitution of 1963.

(g) Any amounts refunded under section 35(2).

(3) "Conservation officer" means an employee of the department of natural resources, or its predecessor or successor agency, who has sworn to the prescribed oath of office and who is designated as a peace officer under section 1606 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1606, and section 1 of 1986 PA 109, MCL 300.21.

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

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 33, Imd. Eff. Feb. 26, 1996 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

**38.1c Definitions; D.**

Sec. 1c.

(1) "Deferred member" means a member who is separated from state service for a reason other than retirement or death and who has satisfied the requirements of section 20(4) or (5) for a deferred retirement allowance.

(2) "Designated temporary layoff" means the layoff of a member that does not exceed 1 month and has a fixed, predetermined, and announced recall date.

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

distributee.

(4) "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.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995

**38.1d Definitions.**

Sec. 1d.

(1) 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, that is maintained by a state, a political subdivision of a state, an agency or instrumentality of a state, or an agency or instrumentality of a political subdivision of a state, so long as amounts transferred into eligible retirement plans from this retirement system are separately accounted for by the plan provider that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse on or before December 31, 2001, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(g) Beginning January 1, 2008, except as otherwise provided in this subsection, "eligible retirement plan" means 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.

(2) 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.

(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.

(3) "Employee" means a person who may become eligible for membership under this act, as provided in section 13, if the person's compensation is paid in whole or in part by this state.

(4) "Employer" or "state" means this state.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2008, Act 353, Imd. Eff. Dec. 23, 2008

**38.1e Definitions; F to I.**

Sec. 1e.

(1) "Final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 5 consecutive years of credited service; or if the member has less than 5 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited service. For a person whose retirement allowance effective date is on or after October 1, 1987, "final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 3 consecutive years of credited service; or if the member has less than 3 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited service. Beginning January 1, 2012, compensation used to compute final average compensation shall not include includable overtime compensation paid to the member on or after January 1, 2012, except that a member's final average compensation that is calculated using any time period on or after January 1, 2012 shall also include, as prorated for the time period, the average of annual includable overtime compensation paid to the member during the 6 consecutive years of credited service ending on the same final date as used to calculate the final average compensation or, if the calculation date is before January 1, 2015, the average of the annual includable overtime compensation paid to the member on or after January 1, 2009 and before the final date as used to calculate the final average compensation. A member's final average compensation shall not be diminished because of required 1-day layoffs. The compensation used in computing the final average compensation for a period during which a member is in a voluntary or involuntary pay reduction plan A or on a designated temporary layoff shall include the value of the hours not worked calculated at the member's hourly rate or rates of pay in effect immediately before the applicable final average compensation period. A member's final average compensation shall not be increased or decreased by the member's participation in voluntary or involuntary pay reduction plan B. Payment for accrued annual leave at separation in excess of 240 hours and payment for part B annual leave hours at separation shall not be included in final average compensation. Beginning October 1, 2003, the compensation used to compute the final average compensation for a period during which a member is participating in the banked leave time program shall include the value of any unpaid furlough hours and 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.

(2) "Final compensation" means a member's annual rate of compensation at the time the member last terminates employment with this state.

(3) "Furlough hours" means unworked hours incurred in conjunction with the banked leave time program.

(4) "Includable overtime compensation" means the value of overtime premium payments for services rendered on or after January 1, 2009, and payments for services rendered in excess of 80 hours in a biweekly pay period on or after January 1, 2009.

(5) "Internal revenue code" means the United States internal revenue code of 1986.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

## 38.1f Definitions; M to O.

Sec. 1f.

(1) "Member" means a state employee included in the membership of the retirement system, as provided for in section 13.

(2) "Membership service" means all service rendered after July 1, 1943.

(3) "New member" means a person who becomes a member of this retirement system on or after January 1, 1945.

(4) "Original member" means a person who became a member of this retirement system before January 1, 1945, or as provided in section 18.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995

### 38.1g Definitions; P.

Sec. 1g.

(1) "Pay reduction plan A" means the plan available to or required of a member during the fiscal years ending on and after September 30, 1981 under which the member may elect to reduce by 1 hour or more in any full-time pay period the number of hours worked with a corresponding reduction in compensation.

(2) "Pay reduction plan B" means the plan available to or required of a member during the fiscal years ending on and after September 30, 1981 under which the member may elect to work an entire full-time pay period, defer compensation for 1 or more of those hours, and accumulate or use the hours for which compensation has been deferred in the same manner as annual leave hours.

(3) "Pension" means annual payments for life payable from funds of the retirement system as provided in this act. A pension shall be paid in equal monthly installments.

(4) "Pension reserve" means the present value, computed upon the basis of mortality and other tables adopted by the retirement board, of all payments to be made on account of a pension, or benefits in lieu of a pension, granted to a member under this act.

(5) "Prior service" means all service as a state employee or as an appointed state officer, and as an elected or appointed state official, rendered before July 1, 1943.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995

### 38.1h Definitions; R.

Sec. 1h.

(1) "Regular interest" means a rate or rates per annum, compounded annually, as the retirement board determines. For the purposes of employee refunds, the interest rate payable shall not exceed 4% per annum, compounded annually.

(2) "Retirant" means a person who has ceased to be a member of the retirement system by reason of retirement with a pension or retirement allowance payable from the funds of the retirement system.

(3) "Retirement allowance" means the sum of the annuity and the pension.

(4) "Retirement board" means the board provided for in section 2 to administer the retirement system.

(5) "Retirement system" means the state employees' retirement system created by section 2.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995

### 38.1i Definitions; S, T.

Sec. 1i.

(1) "Service" means service rendered to this state by an elected or appointed state official or employee of this state. Credit for service shall be determined by appropriate rules and regulations of the retirement board, but not more than 1 year of service shall be creditable for all service in 1 calendar year. The retirement board shall not allow credit for service for any period of more than 1 month in any 1 calendar year during which the employee was absent without pay. However, full service credit shall be given for a period during which an employee is on leave of absence and is receiving worker's compensation benefits as the result of a duty-incurred disability. Full service credit shall also be given to an employee for required 1-day layoffs, for voluntary or involuntary participation in pay reduction plan A, pay reduction plan B, or both, in effect during the fiscal years ending on and after September 30, 1981, for required and designated temporary layoffs, and, beginning October 1, 2003, for furlough hours, and for participation in the banked leave time program.

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

(3) "Tier 1" means the retirement plan available to a member under this act who was first employed and entered

upon the payroll before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

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

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.2 State employees' retirement system; creation; administration by retirement board; rules.

Sec. 2.

(1) A state employees' retirement system is created for the employees of the state of Michigan.

(2) Except as otherwise provided in this section, the administration and management of the retirement system and the responsibility for making effective the provisions of this act are vested in a retirement board. Except as otherwise provided in this section, the retirement board may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the implementation and administration of this act.

(3) Subsection (2) does not apply to the Tier 2 retirement plan. The retirement board shall not promulgate rules for the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.2 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."For transfer of powers and duties of state employees' retirement system board to Michigan retirement board, and abolishment of state employees' employees' retirement system board, see E.R.O. No. 2015-4, compiled at MCL 38.1174.

**Admin Rule:** R 38.11 and R 38.12 of the Michigan Administrative Code.

### 38.3 Retirement board; appointment and terms of members.

Sec. 3.

(1) The retirement board shall consist of 9 members, as follows:

(a) The insurance commissioner, the attorney general, the state treasurer, the deputy legislative auditor general, and the state personnel director.

(b) Two employee members of the retirement system, who shall be appointed by the governor. Not more than 1 employee member of the retirement board shall be from any 1 department, bureau, or agency of state government. The term of office of the employee members shall be 3 years.

(c) The 2 retirant members shall be retirants of the retirement system, who shall be appointed by the governor. The term of office of the retirant members shall be 3 years.

(2) After the effective date of this amendatory act, the seat of the first employee member to retire at the expiration of the member's present term or the member's retirement from active service, whichever shall be first, shall be filled by the appointment of a second retirant member.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.3 ;-- Am. 1965, Act 159, Imd. Eff. July 14, 1965 ;-- Am. 1970, Act 119, Imd. Eff. July 23, 1970 ;-- Am. 1976, Act 277, Eff. Mar. 31, 1977

**Compiler's Notes:** For transfer of position of commissioner of office of financial and insurance regulation as member or chairperson of board or commission to director of department of insurance and financial services, see E.R.O. No. 2013-1, compiled at MCL 550.991.

**38.4 Retirement board; vacancies, vacation of office.**

Sec. 4.

(a) Any vacancy occurring 90 days or more before the expiration of the term of any employee or retirant member of the retirement board shall be filled by appointment by the governor. The person thus appointed shall serve for the balance of the unexpired term.

(b) Any employee or retirant member of the retirement board who fails to attend the scheduled meetings of the retirement board for 3 consecutive months or longer, without valid excuse, shall be considered as having resigned from board membership and the retirement board shall declare his office vacated as of the adoption of a proper resolution, and shall notify the governor of the vacancy.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.4 ;-- Am. 1955, Act 237, Eff. Oct. 24, 1955 ;-- Am. 1970, Act 119, Imd. Eff. July 23, 1970

**38.5 Retirement board; oath; quorum; conducting business at public meeting; notice of meeting; compensation and expenses.**

Sec. 5.

(a) Each member of the retirement board, created by this act, upon election or appointment, shall take an oath of office which shall be immediately filed in the office of the secretary of state. A majority of the retirement board shall constitute a quorum for the transaction of business at a meeting of the board.

(b) The business which the retirement board may perform shall be conducted at a public meeting of the retirement board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(c) The members of the retirement board shall serve without compensation, but shall not suffer a loss because of absence from regular employment, and shall be reimbursed for all actual necessary expense incurred in performance of duties in accordance with the statutes of this state. Notwithstanding this section, the retired state employee member shall receive the per diem compensation established annually by the legislature for the performance of official duties by attendance at regularly scheduled meetings.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.5 ;-- Am. 1972, Act 317, Imd. Eff. Jan. 2, 1973 ;-- Am. 1977, Act 184, Imd. Eff. Nov. 17, 1977 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

**38.6 Retirement board; officers and employees.**

Sec. 6.

Board chairman—secretary—actuary—medical advisor. The retirement board shall elect from its membership a chairman and a vice chairman, and shall appoint an executive secretary, and shall employ such other actuarial, medical, clerical, technical, and administrative employes as may be necessary for the proper operation of the retirement system. The compensation of all persons so appointed and employed shall be fixed in accordance with the official compensation schedules of the civil service commission.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.6

**38.7 Retirement system; actuarial valuation of assets and liabilities; investigation of mortality, service, and compensation of members.**

Sec. 7.

The retirement board shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system; and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members, retirants and beneficiaries of the retirement system. At least once in each 5 year period, the retirement board shall cause an actuarial investigation to be made into the mortality, service, compensation, and other experience of the members and beneficiaries of the retirement system. Upon the basis of such actuarial investigation the retirement board shall adopt such tables as are deemed necessary for the proper operation of the retirement system and for making effective the provisions of this act.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.7 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955

**38.8 Administrative board; investment of funds, purchase of life insurance or annuity, deposits.**

Sec. 8.

(a) The members of the retirement board shall be the trustees of the several funds created by this act. The board may invest and reinvest the funds of the system subject to terms and restrictions imposed by law upon a domestic life insurance company in this state in making and disposing of its investments, and subject to the state law relating to the investment of funds of public employee retirement systems or plans. The board may purchase, hold, sell, assign, transfer and dispose of any investment in which any fund of the system has been invested, the proceeds of such investment and any moneys belonging to the system. All such purchases shall be authorized by a resolution adopted by the board. The board may purchase appropriate contracts of life insurance or annuity from insurers duly authorized to do business in the state, if and when such purchase or purchases shall in the judgment of the board be appropriate or necessary to carry out the purposes of this act.

(b) For the purpose of meeting disbursements for retirement allowance and other payments in excess of the receipts, there shall be kept available by the retirement board an amount, not exceeding 10% of the total amount in the funds provided for by this act, on deposit in the state treasury.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.8 ;-- Am. 1951, Act 25, Imd. Eff. Apr. 13, 1951 ;-- Am. 1953, Act 127, Imd. Eff. May 27, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1965, Act 159, Imd. Eff. July 14, 1965

**38.9 State treasurer as custodian of retirement system funds; powers and duties.**

Sec. 9.

(1) All bonds or other obligations purchased according to section 8 shall be placed in the hands of the state treasurer, who is hereby designated as custodian of the bonds or other obligations, and it shall be his or her duty to collect the principal and the interest on the bonds or other obligations as they become due and payable, and deposit the principal and interest when collected into the retirement system's funds provided for bonds or other obligations. The administrative board may sell any of the bonds or other obligations upon like resolution, and the proceeds of the bonds or other obligations shall be paid by the purchaser to the state treasurer upon delivery to him or her of those bonds or other obligations by the state treasurer.

(2) The state treasurer shall be the custodian of all other funds of the retirement system and all disbursements shall be paid by the state treasurer upon vouchers authorized by the retirement board and bearing the signature of the authorized officer of the retirement board. The state treasurer shall give a separate and additional bond in an amount as may be established by the retirement board in the sum of not to exceed $100,000.00 which bond shall be approved by the attorney general and shall be conditioned for the faithful performance of his or her duties as custodian of the funds of the retirement system. The cost of the bond shall be paid out of the expense fund of the retirement board. The bond shall be deposited with the secretary of state and kept in his or her office.

(3) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by the state treasurer, and all interest earned on retirement system's funds as may be deposited by the state treasurer under this act shall be collected by him or her and placed to the credit of the

retirement fund.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.9 ;-- Am. 2002, Act 372, Imd. Eff. May 24, 2002

**38.10 Retirement board members and employees; interest in investments prohibited.**

Sec. 10.

No employe shall gain from investments. Except as provided herein, no member or employe of the retirement board shall have any interest direct or indirect in the gains or profits of any investment made by the retirement board nor as such directly or indirectly receive any pay or emolument for his services. And no member or person connected with the said retirement board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by the retirement board; nor shall any member or employe of the retirement board become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed of the retirement board.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.10

**38.11 Employees' savings fund, employer's accumulation fund, annuity reserve fund, pension reserve fund, income fund, expense fund, and health insurance reserve fund; creation; health advance funding subaccount; description of funds as reference to accounting records of retirement system.**

Sec. 11.

(1) There is created the employees' savings fund, employer's accumulation fund, annuity reserve fund, pension reserve fund, income fund, expense fund, and health insurance reserve fund.

(2) The employees' savings fund is the fund in which shall be accumulated at regular interest the contributions to the retirement system deducted from the compensation of members. The retirement board shall provide for the maintenance of an individual account for each member that shows the amount of the member's contributions together with interest on those contributions. The accumulated contributions of a member returned to the member upon his or her withdrawal from service, or paid to the member's estate or designated beneficiary in the event of the member's death, as provided in this act, shall be paid from the employees' savings fund. Any accumulated contributions not claimed by a member or the member's legal representative as provided in this act within 5 years after the member's separation from state service shall be transferred from the employees' savings fund to the income fund. The accumulated contributions of a member, upon the member's retirement, shall be transferred from the employees' savings fund to the pension reserve fund.

(3) The employer's accumulation fund is the fund in which shall be accumulated the reserves derived from money provided by this state for the payment of all retirement allowances to be payable to retirants and beneficiaries as provided in this act. The amounts paid by this state shall be credited to the employer's accumulation fund. Upon the retirement of a member, or upon the member's death, if a beneficiary is entitled to a retirement allowance payable from funds of the retirement system, the difference between the reserve for the retirement allowance to be paid on account of the member's retirement or death and the member's accumulated contributions standing to his or her credit in the employees' savings fund at the time of his or her retirement or death shall be transferred from the employer's accumulation fund to the pension reserve fund. If, in any year, the pension reserve fund is insufficient to cover the reserves for retirement allowances and other benefits being paid from the fund, the amount or amounts of the insufficiency or insufficiencies shall be transferred from the employer's accumulation fund to the pension reserve fund.

(4) The annuity reserve fund is the fund from which shall be paid all annuities, or benefits in lieu of annuities, because of which reserves have been transferred from the employees' savings fund to the annuity reserve fund. Upon the adoption of this act, the balance in the annuity reserve fund shall be transferred to the pension reserve fund, and the annuities heretofore payable from the annuity reserve fund shall thereafter become payable from the pension reserve fund.

(5) The pension reserve fund is the fund from which shall be paid all retirement allowances and benefits in lieu of pensions, as provided in this act. For a disability retirant returned to active service with this state, his or her pension reserve, computed as of the date of return, shall be transferred from the pension reserve fund to the employees' savings fund and the employer's accumulation fund in the proportion that this reserve, as of the date of his or her retirement, was transferred to the pension reserve fund from the employees' savings fund and from the employer's accumulation fund. The amounts transferred to the employees' savings fund under this section shall be credited to the member's individual account in the fund.

(6) An income fund is created for the purpose of crediting regular interest on the amounts in the various other funds of the retirement system with the exception of the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. Transfers for special requirements shall be made only when the amount in the income fund exceeds the ordinary requirements of the fund as evidenced by a resolution of the retirement board recorded in its minutes. The retirement board shall annually allow regular interest for the preceding year to each of the funds enumerated in subsections (2), (3), (4), (5), and (8), and the amount allowed under this subsection shall be due and payable to each of these funds and shall be annually credited to the funds by the retirement board and paid from the income fund. However, interest on contributions from members within a calendar year shall begin on the first day of the next calendar year, and shall be credited at the end of the calendar year. Except as provided in this subsection, income, interest, and dividends derived from the deposits and investments authorized by this act shall be paid into the income fund. The retirement system shall determine the share of income, interest, and dividends attributable to the balance in the health advance funding subaccount created under subsection (9) and the share of income, interest, and dividends attributable to the health advance funding subaccount balance shall be paid into the health advance funding subaccount. The retirement board is authorized to accept gifts and bequests. Any funds that come into the possession of the retirement system as a gift or bequest, or any funds that may be transferred from the employees' savings fund by reason of lack of claimant, or because of a surplus in any fund created by this act, or any other money the disposition of which is not otherwise provided for in this act shall be credited to the income fund.

(7) The expense fund is the fund from which shall be paid the expenses of the administration of this act, exclusive of amounts payable as retirement allowances and other benefits provided for in this act. The legislature shall appropriate the funds necessary to defray and cover the expenses of administering this act.

(8) The health insurance reserve fund is the fund into which appropriations made by the legislature, subscriber co-payments, and payments by the retirement system under section 68 for health, dental, and vision insurance premiums are paid. Health, dental, and vision insurance premiums payable pursuant to sections 20d and 68 shall be paid from the health insurance reserve fund. The assets and any earnings on the assets contained in the health insurance reserve fund and the health advance funding subaccount described in subsection (9) are not to be treated as pension assets for any purpose.

(9) The health advance funding subaccount is the account to which amounts transferred pursuant to sections 20d, 38(6), and 52 are credited. Any amounts received in the health advance funding subaccount and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 20d is at least 100% funded. The department may expend funds or transfer funds to another account to expend for health benefits under section 20d if the actuarial accrued liability for health benefits under section 20d is at least 100% funded. For each fiscal year after the fiscal year in which the actuarial accrued liability for health benefits under section 20d is at least 100% funded by the health advance funding subaccount, amounts received in the health advance funding subaccount and accumulated earnings on those amounts may be expended or credited to fund health benefits under section 20d as provided in section 38(3). For the fiscal year ending on September 30, 2003 only, the general fund portion of all amounts received in the health advance funding subaccount as of October 1, 2002 and accumulated earnings on those amounts shall be transferred to the general fund. Notwithstanding any other provision of this section, the department may transfer amounts from the health advance funding subaccount to the employer's accumulation fund created under this section if the department does both of the following:

(a) At least 45 days before the intended transfer, submits a request to the chairs of the senate and house appropriations committees and, at least 15 days before the intended transfer, obtains the approval of both the senate and house appropriations committees.

(b) Ensures that the request submitted to the senate and house appropriations committees contains an actuarial valuation prepared pursuant to section 38 that demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions does not exceed the actuarial present value of benefits.

(10) The description of the various funds in this section shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of assets credited to the various funds of the retirement system.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.11 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2002, Act 743,

Imd. Eff. Dec. 30, 2002
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.12 Annual statement of retirement funds in custody of state treasurer; availability of report and other writings to public; request for statement of credit.

Sec. 12.

(1) The state treasurer shall furnish annually to the retirement board a statement of the amount of the funds in the custody of the treasurer belonging to the retirement system.

(2) The report and any writing prepared, owned, used, in the possession of, or retained by the retirement board or state treasurer in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) A member of the retirement system shall be furnished with a statement of the amount of the credit of that person's individual account in the employees' savings fund upon written request. The retirement board shall not be required to answer more than 1 request made by the retirement system member pursuant to this subsection within a 12-month period.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.12 ;-- Am. 1977, Act 184, Imd. Eff. Nov. 17, 1977

### 38.13 Membership in retirement system.

Sec. 13.

(1) Except as otherwise provided in this act, membership in the retirement system consists of state employees occupying permanent positions in the state civil service. All state employees except those specifically excluded by law and those who are members or eligible to be members of other statutory retirement systems in this state, must become members of the retirement system. The employees may use service previously performed as an employee of this state in meeting the service requirements for the retirement allowances and death benefits provided by the retirement system. However, the prior service must not be used in computing the amount of a retirement allowance to be paid by the retirement system unless the employee pays to the retirement system the amount the employee's contributions would have been had the employee become a member immediately on employment by the state with interest compounded annually at the regular rate from a date 1 year after the date of employment by this state to the date of payment. An individual who draws compensation as a state employee of a political subdivision of this state is eligible for the benefits provided by this act to the extent of the individual's compensation paid by this state. An individual who meets the requirements of section 44a is a member of the retirement system.

(2) Elected or appointed state officials may elect not to become or continue as members of the retirement system by filing written notice with the retirement board. An appointed state official who is a member of a state board, commission, or council and who receives a per diem rate in his or her capacity as a member of the board, commission, or council is excluded from membership in the retirement system for the service rendered in his or her capacity as a member of the board, commission, or council. Service performed by an elected or appointed official during the time the official elects not to participate must not be used in meeting the service requirement or in computing the amount of retirement allowance to be paid by the retirement system. A member who elects not to participate must be refunded all contributions made before the election.

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

(a) A person who is a contributing member in the public school employees' retirement system provided for in the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

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

(c) A person who comes within the Michigan state police retirement system provided for in the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(d) An individual who is first employed and entered upon the payroll on or after March 31, 1997 for employment for which the individual would have been eligible for membership under this section before March 31, 1997. An individual described in this subdivision is eligible to be a qualified participant in Tier 2 subject to sections 50 to 69.

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

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

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

(5) An individual, not regularly employed by this state, who is employed through participation in 1 or more of the following programs, shall not be a member of the retirement system and must not receive service credit for the employment:

(a) A program authorized, undertaken, and financed pursuant to the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839.

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

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

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

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

(6) An individual, not regularly employed by this state, who is employed to administer a program described in subsection (5) is not a member of the retirement system and must not receive service credit for the employment.

(7) If an individual described in subsection (5)(a) later becomes a member of this retirement system within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment that is excluded in subsection (5) for purposes of determining a retirement allowance on the payment by the individual's employer under subsection (5) from funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, as funds permit, to the retirement system of the contributions, plus regular interest, the employer would have paid had the employment been rendered in a position covered by this act. During the individual's employment in the transitional public employment program, the individual's employer shall place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions that the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees that the employer determined would move from the transitional public employment program into positions covered by this act. If the funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, are insufficient, the remainder of the employer contributions must be paid by the individual's current employer.

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

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- Am. 1947, Act 351, Eff. Oct. 11, 1947 ;-- CL 1948, 38.13 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1952, Act 38, Eff. Sept. 18, 1952 ;-- Am. 1955, Act 237, Eff. Oct. 24, 1955 ;-- Am. 1956, Act 91, Imd. Eff. Apr. 5, 1956 ;-- Am. 1957, Act 145, Imd. Eff. May 29, 1957 ;-- Am. 1958, Act 207, Imd. Eff. May 5, 1958 ;-- Am. 1960, Act 156, Eff. Aug. 17, 1960 ;-- Am. 1961, Act 56, Eff. Sept. 8, 1961 ;-- Am. 1965, Act 189, Imd. Eff. July 15, 1965 ;-- Am. 1970, Act 119, Imd. Eff. July 23, 1970 ;-- Am. 1974, Act 6, Imd. Eff. Jan. 30, 1974 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1976, Act 63, Imd. Eff. Mar. 30, 1976 ;-- Am. 1978, Act 423, Imd. Eff. Sept. 30, 1978 ;-- Am. 1979, Act 146, Imd. Eff. Nov. 13, 1979 ;-- Am. 1983, Act 157, Imd. Eff. July 24, 1983 ;-- Am. 1984, Act 185, Imd. Eff. July 3, 1984 ;-- Am. 1993, Act 195, Eff. Dec. 28, 1994 ;-- Am. 1996, Act 389, Imd. Eff. Sept. 30, 1996 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2002, Act 743, Imd. Eff. Dec. 30, 2002 ;-- Am. 2018, Act 682, Imd. Eff. Dec. 28, 2018

**Compiler's Notes:** Act 136 of 1945, referred to in this section, is repealed by Act 300 of 1980.Section 2 of Act 195 of 1993 provides as follows:“Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws.”Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or

unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.13a Blind or partially sighted licensed vending stand operators deemed employees; rights and benefits; eligibility; contribution as condition to service credit; blindness not deemed retirable disability; employer cost.

Sec. 13a.

Effective January 1, 1973, blind or partially sighted persons licensed as vending stand operators within the controlled programs of the bureau of blind services are deemed to be employees within the meaning of this act for state retirement purposes only, and except as hereinafter provided are entitled to all the rights and benefits of state employees covered by the provisions of this act. Operators licensed in the vending stand program after January 1, 1973, who meet all the eligibility requirements of the state retirement system shall participate under the provisions of this act. A person covered by this section may receive retirement system service credit for not more than 10 years of service performed before January 1, 1973, providing, that such person pays the state employees' retirement system a contribution equal to that which would have been paid for each year that the blind vending stand operator has been under the state employees' retirement system with a maximum contribution of $416.00 per year. Blindness shall not be deemed a retirable disability under this act for persons covered by this section. The employer shall be deemed to be the Michigan department of social services. The employer cost of retirement shall be funded from moneys appropriated yearly to the department of social services.

**History:** Add. 1972, Act 320, Imd. Eff. Jan. 2, 1973 ;-- Am. 1973, Act 174, Imd. Eff. Dec. 21, 1973 ;-- Am. 1974, Act 352, Imd. Eff. Dec. 21, 1974

### 38.13b Credited service to include credit for service rendered to joint federal-state commission; conditions.

Sec. 13b.

A member who retires on or after October 1, 1979 shall have his or her credited service include credit for service rendered by him or her between October 1, 1971 and October 1, 1979 to a joint federal-state commission authorized under the public works and economic development act of 1965, Public Law 89-136, 79 Stat. 552, in which the member represented this state and for which at least 50% of the member's salary was derived from funds provided by this state, if the member pays into the employees' savings fund a contribution determined by the board, but not less than an amount equal to 5% of the member's full-time compensation for the fiscal year in which payment is made, for each year of service claimed, and if the member relinquishes all rights in and to any pension benefit he or she would be eligible to receive from another publicly supported pension plan as the result of that service.

**History:** Add. 1982, Act 450, Imd. Eff. Dec. 30, 1982

### 38.14 Information required of members by retirement board.

Sec. 14.

Information furnished by members. Within 3 months after this act becomes effective, each original member, and within 30 days after his employment, each new member, shall submit to the retirement board a statement showing his name, sex, title, compensation, duties, date of birth, and length of service as a state employe, and such other information as the retirement board shall require. Each state employe, upon becoming a member, shall file a detailed statement of all his prior service as an employe and shall furnish such other facts as the retirement board may require for the proper operation of the retirement system.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.14

### 38.15 Original members; prior service certification.

Sec. 15.

Subject to such rules and regulations as the retirement board shall adopt, the retirement board shall certify to each original member of the retirement system the aggregate amount of all service rendered by him prior to July 1, 1943. Such certification shall be final and conclusive for retirement purposes as to such service, unless modified by the retirement board upon application made by the member.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.15 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955

### 38.16 Cessation of membership; reemployment.

Sec. 16.

(1) Except as otherwise provided in this act, if a member separates or is separated from state service without leave of absence before becoming eligible to retire with a retirement allowance payable from funds of the retirement system, the member ceases to be a member and forfeits credit for all service rendered by him or her before the date the member last separated from state service.

(2) If the individual again becomes employed by this state, he or she shall again become a member of the retirement system.

(3) An employee who reenters state service within 15 years after the date of his or her last separation from state service, or who accumulates 5 or more years of continuous service credit as a member of the retirement system after reentering state service, shall have the service credit forfeited by him or her at the time he or she last separated from service restored to his or her credit, if the member has not withdrawn his or her accumulated contributions from the employees' savings fund. If an employee described in this subsection has withdrawn his or her accumulated contributions from the employees' savings fund, the member shall have the service credit forfeited by him or her restored to his or her credit if he or she returns to the fund all amounts that were previously withdrawn from the fund, together with regular interest on that amount computed from the date of withdrawal to the date of repayment.

(4) If a member becomes a retirant or dies, he or she ceases to be a member.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- Am. 1945, Act 177, Eff. Sept. 6, 1945 ;-- CL 1948, 38.16 ;-- Am. 1953, Act 112, Imd. Eff. May 25, 1953 ;-- Am. 1954, Act 126, Eff. Aug. 13, 1954 ;-- Am. 1955, Act 237, Eff. Oct. 24, 1955 ;-- Am. 1970, Act 119, Imd. Eff. July 23, 1970 ;-- Am. 1997, Act 3, Imd. Eff. Apr. 15, 1997

### 38.17 Service credited from state board of control for vocational education; conditions.

Sec. 17.

(a) At retirement a member's credited service shall include service rendered by him under the state board of control for vocational education, to the same extent that such service would have been credited had it been rendered in a position covered under this act, if the member (1) relinquishes for himself and his beneficiary all rights in and to a retirement allowance under the provisions of Act No. 136 of the Public Acts of 1945, as amended, being sections 38.201 to 38.356 of the Compiled Laws of 1948, and (2) pays into the employees' savings fund the contributions, together with regular interest, he would have paid had such service been rendered in a position covered under this act.

(b) At retirement a member's credited service shall include service rendered by him in a position covered under Act No. 136 of the Public Acts of 1945, as amended, to the same extent that such service would have been credited

had it been rendered in a position covered under this act, but such service credit shall not include any period of service for which the member has acquired or could have acquired entitlement to an annuity, pension or retirement allowance payable to or to be payable by a retirement system, except the federal social security old-age, survivors and disability insurance program, under which the political subdivision covers its employees, and if the member (1) relinquishes for himself and his beneficiary all rights in and to a retirement allowance under the provisions of Act No. 136 of the Public Acts of 1945, as amended, and (2) pays into the employees' savings fund the contributions, together with regular interest, he would have paid had such service been rendered in a position covered under this act.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.17 ;-- Am. 1951, Act 146, Eff. Sept. 28, 1951 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1957, Act 145, Imd. Eff. May 29, 1957 ;-- Am. 1960, Act 156, Eff. Aug. 17, 1960 ;-- Am. 1965, Act 159, Imd. Eff. July 14, 1965 ;-- Am. 1965, Act 189, Imd. Eff. July 15, 1965 ;-- Am. 1965, Act 384, Imd. Eff. Oct. 15, 1965

### 38.17a Use of credited service acquired in employ of governmental unit; “governmental unit of the state” defined.

Sec. 17a.

(1) If an employee of a department of a governmental unit of the state is transferred to the employ of the state, by reason of a function or functions of the department being transferred to the state, the employee so transferred, who does not withdraw his accumulated contributions from the governmental unit's retirement system, and subsequent to the date of his transfer acquires at least 1 year of service credit as a member of the state employees' retirement system, shall be entitled to use the credited service in force previously acquired as a member of the governmental unit's retirement system in meeting the service requirements for all retirement allowances and death benefits by the state employees' retirement system. The credited service acquired in the employ of the governmental unit shall not be used in computing the amount of a retirement allowance to be paid by the state employees' retirement system.

(2) For the purposes of this act "governmental unit of the state" includes the international bridge authority created by Act No. 99 of the Public Acts of 1954, being sections 254.221 to 254.240 of the Michigan Compiled Laws.

**History:** Add. 1965, Act 402, Imd. Eff. Oct. 27, 1965 ;-- Am. 1966, Act 122, Imd. Eff. June 23, 1966 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974

### 38.17b Credited service to include service rendered certain universities.

Sec. 17b.

A member retired after January 1, 1965 shall have his or her credited service include service rendered by him or her to the university of Michigan, Michigan state university, Wayne state university, Oakland university, Grand Valley state university and Saginaw valley state university to the same extent that service would have been credited had it been rendered in a position covered under this act, if the member pays into the employees' savings fund the contributions, together with regular interest, he or she would have paid had his or her service been rendered in a position covered under this act and if the member relinquishes for himself or herself and his or her beneficiary all rights in and to a retirement allowance for service rendered to the university of Michigan, Michigan state university, Wayne state university, Oakland university, Grand Valley state university and Saginaw valley state university.

**History:** Add. 1976, Act 34, Imd. Eff. Mar. 5, 1976 ;-- Am. 1987, Act 164, Imd. Eff. Nov. 5, 1987

### 38.17c Retirement system service credit for period of service under county department of social services;

**conditions.**

Sec. 17c.

Any member retired on or after January 1, 1975 who is an employee of a county department of social services who was merged and placed under the employment of the state department of social services pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.122 of the Michigan Compiled Laws, shall receive retirement system service credit for the period of service under the county department of social services if the employee withdraws all rights in and to any pension benefit he may be eligible to receive under a county pension plan, and pays into the state employees' retirement system a contribution of $600.00 for each year of service claimed.

**History:** Add. 1976, Act 227, Imd. Eff. Aug. 4, 1976

## 38.17d Credited service to include service rendered to department of state police or its predecessor agencies, or to court of record; conditions.

Sec. 17d.

A member who retires after October 8, 1976, at the member's request shall have his or her credited service include service rendered by that member to the department of state police, or its predecessor agencies, or to a court of record in this state to the same extent that the service is credited when rendered in a position covered under this act, and if service credited when rendered in a position in a court of record of this state exceeds 5 years, and if the member pays into the employees' savings fund the contributions the member paid during that period of service with the state police or its predecessor agencies or with the court of record plus interest as established by the board and if the member relinquishes for himself or herself and the member's beneficiary all rights in and to a retirement allowance for that service rendered.

**History:** Add. 1976, Act 271, Imd. Eff. Oct. 8, 1976 ;-- Am. 1978, Act 593, Imd. Eff. Jan. 4, 1979

## 38.17e, 38.17f Repealed. 1998, Act 205, Eff. Aug. 1, 1998.

**Compiler's Notes:** The repealed sections pertained to purchase of service credit as manager of department fee branch office or service in VISTA or peace corps program.

## 38.17g Parental leave; purchase of service credit.

Sec. 17g.

(1) A member who left or leaves service with the state or who left or leaves service for a reporting unit of the public school employees retirement system for purposes of parental leave, and returned or returns to service with the state without other intervening employment of more than 20 hours per week for each week for which service credit is claimed, may purchase service credit for the time period or periods during which the person was separated or on leave of absence from service with the state or separated or on leave of absence from a reporting unit of the public school employees retirement system because of parental leave, upon submitting an application described in subsection (5) and upon payment to the retirement system of an amount that is equal to the actuarial cost multiplied by the member's full-time or equated full-time fiscal year compensation for the fiscal year in which payment is made multiplied by each year and fraction of a year of service to be purchased, up to the maximum. For the purpose of computing payment under this subsection, the compensation amount used shall not be less than the highest full-time or equated full-time fiscal year compensation previously received by the member as a member of the system. The

total service credited under this section shall not exceed 5 years. A member requesting purchase of service credit under this section shall certify to the retirement system the purpose for which the member took leave or was separated from service with the state.

(2) Service credit purchased under this section shall not be used to satisfy the minimum number of years of service credit required to receive a retirement allowance under this act.

(3) If a member who made payment under this section dies and a retirement allowance is not payable, or if the member leaves service with the state before his or her retirement allowance becomes effective, the payment made by the member shall be refunded upon request to the member, to the person designated by the member in writing to the retirement system, or if a person is not designated, then to the member's legal representative.

(4) A member who reduces hours of employment with the state for purposes of parental leave may purchase service credit for those hours by which employment was reduced if all other requirements of this section are met.

(5) A member requesting purchase of service credit under this section shall submit an application as prescribed by the retirement system in which the member shall certify the time period claimed for parental leave and the purpose of the parental leave. If a request for purchase of service credit under this section is a result of leave taken to care for the member's child by birth or adoption, then the member also shall submit a certified copy of a birth certificate or adoption document from the appropriate court.

(6) Parental leave is creditable under this act until the child, by birth or adoption, attains age 18 or is married, whichever occurs first.

(7) For purposes of this section, "parental leave" means either of the following:

(a) The presence of the member in the active participation or supervision in the day-to-day, ongoing care or maintenance of his or her child by birth or adoption, for which the member reduces or eliminates the number of hours worked for the state or the reporting unit in a normal work time period.

(b) A member's pregnancy, whether brought to full term or not, childbirth, and recuperation, for which the member reduces or eliminates the number of hours worked for the state or the reporting unit in a normal work time period.

**History:** Add. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 2004, Act 109, Imd. Eff. May 20, 2004

## 38.17h Full-time service as employee with city, county, township, or village of this state; purchase of service credit.

Sec. 17h.

(1) A member may elect to purchase service credit for not more than 5 years of full-time service as an employee with a city, county, township, or village of this state, upon request and presentation of documentation of the employment rendered which is verifiable from official employment records, which may be substantiated by federal wage statements, or other acceptable documentation as determined by the retirement board, and upon payment to the board of an amount which is equal to the actuarial cost multiplied by the member's full-time or equated full-time fiscal year compensation for the fiscal year in which payment is made multiplied by each year and fraction of a year of service to be purchased, up to the maximum. For the purpose of computing payment under this subsection, the compensation amount used shall not be less than the highest full-time or equated full-time fiscal year compensation previously received by the member as a member of the system.

(2) Service credit purchased under this section shall not be used to satisfy the minimum number of years of service credit required to receive a retirement allowance under this act.

(3) Service credit purchased under this section shall not be creditable toward retirement under this act if the member is or was eligible to receive a pension or annuity for the same service from another retirement system.

(4) If a member who made payment under this section dies and a retirement allowance is not payable or if the member leaves service with the state before his or her retirement allowance becomes effective, the payment made by the member shall be refunded upon request to the member, to the person designated by the member in writing to the board, or if a person is not designated, then to the member's legal representative.

**History:** Add. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987

**38.17i Full-time service with federal government or as state employee with another state; purchase of service credit.**

Sec. 17i.

(1) A member may elect to purchase service credit for not more than 5 years of full-time service with the federal government, or as a state employee with another state, upon request and presentation of documentation of the employment rendered which is verifiable from official federal or state government retirement system records or other acceptable documentation as determined by the retirement board, and upon payment to the board of an amount which is equal to the actuarial cost multiplied by the member's full-time or equated full-time fiscal year compensation for the fiscal year in which payment is made multiplied by each year and fraction of a year of service to be purchased, up to the maximum. For the purpose of computing payment under this subsection, the compensation amount used shall not be less than the highest fiscal year compensation previously received by the member as a member of the system. A member may not purchase service credit under this section for service with the federal government that may be purchased under section 18.

(2) Service credit purchased under this section shall not be used to satisfy the minimum number of years of service credit required to receive a retirement allowance under this act.

(3) Service credit purchased under this section shall not be creditable toward retirement under this act if the member is eligible to receive a pension or annuity for the same service from another retirement system.

(4) If a member who made payment under this section dies and a retirement allowance is not payable or if the member leaves service with the state before his or her retirement allowance becomes effective, the payment made by the member shall be refunded upon request to the member, to the person designated by the member in writing to the board, or if a person is not designated, then to the member's legal representative.

**History:** Add. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987

**38.17j Purchase of combined total of more than 10 years prohibited; purchase of service credit in separate increments; future purchases not barred; refund; actuarial cost.**

Sec. 17j.

(1) On and after June 23, 1987, a member who is otherwise entitled to purchase service credit under section 17g, 17h, 17i, 17k, 17l, 17m, or 17n shall not purchase a combined total of more than 10 years of service credit under those sections.

(2) On and after June 23, 1987, a member who under section 17c, 17g, 17h, 17i, 17k, 17l, 17m, 17n, or 18(2) is otherwise entitled to purchase service credit may purchase the service credit in separate increments equal to 1 or more full years, or a remaining fraction of a year, if any, or both. Partial purchase of service credit under this section does not bar future purchases otherwise in compliance with this section and the provisions of this act authorizing the purchase, but computation of the amount of payment due shall be made separately for each purchase.

(3) If a member who made payment under this section dies and a retirement allowance is not payable or if the member leaves service with this state before his or her retirement allowance becomes effective, the payment made by the member shall be refunded upon request to the member, to the person designated by the member in writing to the board, or if a person is not designated, then to the member's legal representative or estate.

(4) Actuarial cost shall be equal to the product of subdivisions (a), (b), and (c), as follows:

(a) A percentage, determined by the retirement board and the department, that when multiplied by a member's compensation, as determined under subdivision (b), results in the average actuarial present value of the additional benefits resulting from the crediting of 1 additional year of service. The percentage may vary because of age, credited service, or benefit coverage. An increase or decrease in the percentage under this subdivision shall not become effective before the expiration of 6 months or more after the retirement board notifies the members of the increase or decrease.

(b) A member's compensation. The member's compensation shall be the member's full-time or equated full-time compensation earned in the fiscal year immediately before the fiscal year in which the application to purchase and payment for the service are made. The compensation amount used shall not be less than the highest compensation previously earned by the member.

(c) The number of years, including any fraction of a year, of credited service a member elects to purchase up to the maximum allowed.

**History:** Add. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1989, Act 9, Eff. July 1, 1989 ;-- Am. 1998, Act 205, Eff. Aug. 1, 1998 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

### 38.17k Repealed. 1998, Act 205, Eff. Aug. 1, 1998.

**Compiler's Notes:** The repealed section pertained to purchase of approved medical leave.

### 38.17l Purchase of additional service credit by employee of state accident fund, Michigan biologic products institute, or liquor control commission.

Sec. 17l.

(1) An employee of the state accident fund who has 5 or more but less than 10 years of credited service as of the effective date of the transfer in order to qualify for a retirement allowance under this act may purchase additional service credit under this subsection. A member who purchases additional service credit shall contribute within 10 years after the effective date of the transfer an amount equal to the product of the following:

(a) Ten less the number of years and fraction of a year of that employee's credited service.

(b) The employee's full-time or equated full-time fiscal year compensation for the last fiscal year before the effective date of the transfer.

(c) The actuarial cost percentage determined under section 1a for the year in which the effective date of the transfer occurred.

(2) In order to qualify for a retirement allowance under this act, an employee of the Michigan biologic products institute who has 5 or more but less than 10 years of credited service as of the effective date of the conveyance of the Michigan biologic products institute under the Michigan biologic products institute transfer act may purchase additional service credit under this subsection. A member who elects within 1 year after the effective date of the conveyance to purchase additional service credit under this subsection shall contribute within 11 years after the effective date of the conveyance an amount equal to the product of the following:

(a) Ten less the number of years and fraction of a year of that employee's credit service.

(b) The employee's full-time or equated full-time fiscal year compensation for the last fiscal year before the effective date of the conveyance.

(c) The actuarial cost percentage determined under section 1a(2) for the year which is 1 year after the year in which the effective date of the conveyance occurred.

(3) Subsection (2) applies only to members who were employees of the Michigan biologic products institute as of the effective date of the conveyance and who maintain employment with the transferee for not less than 1 year unless the employee is laid off by the new employer for reasons other than good cause.

(4) An employee of the liquor control commission created by section 5 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.5 of the Michigan Compiled Laws, whose employment is terminated due to the privatization of the distribution of spirits within this state pursuant to the resolution and order adopted by the liquor control commission on February 7, 1996, a plan adopted pursuant to statute or court order, or a plan adopted pursuant to both statute and order of the liquor control commission and who has 5 or more but less than 10 years of credited service on the date the privatization is effectuated in order to qualify for a retirement allowance under this act may purchase additional service credit under this subsection. The cost of benefits paid under this section shall be paid out of the revolving fund created under section 10 of Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.10 of the Michigan Compiled Laws. A member who elects within 1 year to purchase additional service credit under this subsection shall contribute within 6 years after the privatization date or the date of separation from state employment, whichever occurs first, an amount equal to the product of the following:

(a) Ten less the number of years and fraction of a year of that employee's credited service.

(b) The employee's full-time or equated full-time fiscal year compensation for the last fiscal year before the privatization date.

(c) The actuarial cost for the year in which the privatization date occurred.

(5) Not more than 5 years of additional service credit may be purchased under this section.

**History:** Add. 1993, Act 195, Eff. Dec. 28, 1994 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 521, Imd. Eff. Jan. 13, 1997

**Compiler's Notes:** Section 2 of Act 195 of 1993 provides as follows:"Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

### 38.17m Purchase of service credit; limitation; refund.

Sec. 17m.

(1) A member may elect to purchase not more than 5 years of service credit less the number of years of service credit purchased under sections 17e, 17f, and 17k, upon request and payment to the retirement system of the actuarial cost.

(2) Service credit purchased under this section may not be used to satisfy the minimum number of years of service credit required to receive a retirement allowance under this act.

(3) If a member who made payment under this section dies and a retirement allowance is not payable, or if the member leaves service and a retirement allowance is not payable, the payment made by the member shall be refunded upon request to the member, the member's refund beneficiary, if any, or to the member's legal representative or estate.

**History:** Add. 1998, Act 205, Eff. Aug. 1, 1998

### 38.17n City employee; transfer or purchase of service credit.

Sec. 17n.

(1) A member may transfer or purchase service credit earned when the member was an employee of a city with a population over 750,000 if all of the following apply:

(a) The member became a member on September 1, 1981.

(b) The member was employed by a city with a population over 750,000 on August 31, 1981.

(c) The pension system of the city with a population over 750,000, the city with a population over 750,000, or the member agrees to contribute the actuarial cost of the service credit transferred or purchased to the retirement system.

(2) Upon payment of the actuarial cost of the service credit purchased, the retirement system shall credit the member with the service.

**History:** Add. 2002, Act 93, Imd. Eff. Mar. 27, 2002

### 38.18 Credit for military or federal service; credit for prior service; conditions; computation.

Sec. 18.

(1) A member of the retirement system who, while an employee of this state, was or who is drafted or enlisted into active military or other armed service of the United States government during time of war, or a member who is drafted or enlisted into active armed service during time of peace, and who returns for reemployment as a state employee within 6 months after the member's discharge from active service, or if hospitalized at date of discharge, returns for reemployment as a state employee within 6 months after release from the military facility, shall have all that active service credited as a member of the retirement system, in the same manner as if the member had served the state uninterruptedly but not more than 5 years of that service may be credited to a member. During the period

of active service, and until return to state employment, the member's contributions to the employee's savings fund shall be suspended and the balance in the employees' savings fund standing to the member's credit as of the last payroll date preceding the leave of absence from the service of the member's department shall be accumulated at regular interest. If the member withdraws all or part of the accumulated contributions from the employees' savings fund, the active service shall not be credited until the member returns to the fund all amounts the member withdrew, together with regular interest computed from the date of withdrawal to the date of repayment.

(2) On or after January 1, 1978 a member of this retirement system who does not meet the requirements of subsection (1) and who was drafted, enlisted, inducted, or commissioned into active duty with the military or other armed service of the United States government may elect to receive service credit for not more than 5 years of active duty upon request and payment to the retirement system of an amount equal to 5% of the member's full-time compensation for the fiscal year in which payment is made multiplied by the years of service that the member elects to purchase up to the maximum. Service shall not be credited if it is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction does not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve. Armed service shall not be credited under this subsection until the member has accumulated the number of years of credited service needed to vest in the retirement system. Armed service under this subsection shall not be creditable to a member on deferred retirement status under section 20(4) before May 18, 1978. For purposes of computing payment under this subsection, the compensation amount used shall not be less than the highest fiscal year compensation previously received by the member.

(3) A person who was in the employ of the Michigan employment service on January 1, 1942, the date on which the employment service and its personnel were taken over by the United States employment service, and who continued in the employ of the United States employment service or who was temporarily taken out of the United States employment service for service in the war manpower commission or other government agency engaged in the prosecution of the war and later returned to the United States employment service, and whose service to the state, United States government, and state again was continuous and who was in the employ either of the United States employment service or of this state on November 16, 1946, the date on which the employment service was returned to the state, and who reentered state service on or before that date, shall upon his reentry into the state service become an original member of the retirement system, and shall receive full service credit for the period during which the personnel of the Michigan employment service was taken over by the United States employment service.

(4) A person who entered into the employ of the Michigan employment service while the employment service was under the United States employment service and who retires after April 30, 1978, may receive service credit for the service under the United States employment service by contributing to the retirement system contributions the person would have made from July 1, 1943, to November 16, 1946, as if that service were rendered as a state employee, plus the interest with which the contributions would have been credited from the January following the year of employment to the date of repayment. The salary on which contributions are based shall be the salary received as a state employee on November 16, 1946.

(5) A member who has prior service is entitled to credit for that prior service if at the time of retirement the member has 15 or more years of total service, of which the last 5 are continuous years of service and if the member contributions equal the contributions made or that would have been made for not less than 15 years of membership service. In the computation of unpaid member contributions, the contribution rate will be computed on the member's salary level at retirement or date of payment, whichever first occurs.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1948, 1st Ex. Sess., Act 41, Imd. Eff. May 10, 1948 ;-- CL 1948, 38.18 ;-- Am. 1949, Act 72, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1960, Act 156, Eff. Aug. 17, 1960 ;-- Am. 1962, Act 233, Eff. Mar. 28, 1963 ;-- Am. 1966, Act 5, Imd. Eff. Mar. 10, 1966 ;-- Am. 1968, Act 111, Eff. Nov. 15, 1968 ;-- Am. 1969, Act 299, Imd. Eff. Aug. 11, 1969 ;-- Am. 1978, Act 148, Imd. Eff. May 18, 1978 ;-- Am. 1978, Act 622, Imd. Eff. Jan. 6, 1979 ;-- Am. 1990, Act 177, Imd. Eff. July 2, 1990 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995

**38.19 Retirement upon written application to retirement board; retirement without reduction in retirement allowance; definitions; layoff status because agency or inpatient facility designated for closure; conditions; certification; application; funding additional costs; employees of state accident fund, Michigan biologic products institute, or liquor control commission.**

Sec. 19.

(1) A member who is 60 years of age or older and has 10 or more years of credited service or a member who is 60 years of age or older and has 5 or more years of credited service as provided in section 20(4) or (5) may retire

upon written application to the retirement board, stating a date on which he or she desires to retire. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1).

(2) A member who is 55 years of age or older, but less than 60 years of age, and has 15 or more years of credited service, may retire upon written application to the retirement board stating a date on which he or she desires to retire. Upon retirement he or she shall receive a retirement allowance computed according to section 20(1). Except as otherwise provided in this act, the retirement allowance of a member who has less than 30 years of credited service shall be reduced by an amount that is 0.5% of the retirement allowance multiplied by the number of months the person's age at retirement is under 60 years. The reduction of 1/2 of 1% for each month and fraction of a month from the member's retirement allowance effective date to the date of the member's sixtieth birthday provided for in this subsection does not apply to a member who retired before July 1, 1974 and before attainment of age 60, with 30 or more years of credited service. The retirement allowance of a retirant or beneficiary of a retirant who retired before that date shall be recalculated disregarding the reduction, and the person receiving the retirement allowance is eligible to receive an adjusted retirement allowance based on the recalculation beginning October 1, 1987, but is not eligible to receive the adjusted amount attributable to any month beginning before October 1, 1987. The recalculated retirement allowance provided by this subsection shall be paid by January 1, 1988. The retirement allowance of a retirant who dies before January 1, 1988, and who has not nominated a retirement allowance beneficiary pursuant to section 31, shall not be recalculated pursuant to this subsection.

(3) Notwithstanding any other provision of this section, effective April 1, 1988, a member may retire with a retirement allowance computed according to section 20(1), without regard to the reduction in subsection (2), if all of the following apply:

(a) The member files a written application with the retirement board stating a date, not less than 30 or more than 90 days after the execution and filing of the application, on which the member desires to retire, and which is within the early retirement effective period.

(b) The member was employed by the state for the 6-month period immediately preceding the member's retirement allowance effective date. This subdivision does not apply to a member who had been restored to active service during that 6-month period pursuant to section 33.

(c) On the last day of the month immediately preceding the retirement allowance effective date stated in the application, the member's combined age and length of credited service is equal to or greater than 80 years and the member is 50 years of age or older.

(d) For purposes of this subsection, "early retirement effective period" means 1 of the following:

(i) Except as provided in subparagraph (ii), the period beginning on April 1, 1988 and ending on April 1, 1989.

(ii) For a member employed by a hospital or facility owned or operated by the department formerly known as the department of mental health that is in the process of being closed by the department formerly known as the department of mental health, the period beginning on April 1, 1988 and ending on October 1, 1989.

(4) As used in subsections (5) to (9):

(a) "Agency of the department" means 1 of the following:

(i) Southwest Michigan community living services.

(ii) Wayne community living services.

(b) "Department inpatient facility" means 1 of the following:

(i) A developmental disability center that is directly operated by the department formerly known as the department of mental health for purposes of providing inpatient care and treatment services to persons with developmental disabilities.

(ii) A psychiatric hospital that is directly operated by the department formerly known as the department of mental health for purposes of providing inpatient diagnostic and therapeutic services to persons who are mentally ill.

(5) Notwithstanding any other provision of this section, a member who is an employee of an agency of the department or a department inpatient facility and is on layoff status because the agency or inpatient facility has been designated by the state officer formerly known as the director of mental health for closure on or after October 1, 1989, may retire as provided in subsection (7) or (8), as applicable, with a retirement allowance computed according to section 20(1), without regard to the reduction in subsection (2), upon satisfaction of any 1 of the following conditions:

(a) The member is 51 years of age or older and has 25 or more years of credited service, the last 5 of which are as an employee of an agency of the department designated for closure or a department inpatient facility designated for closure.

(b) The member is at least 56 years of age and has 10 or more years of credited service, the last 5 of which are as an employee of an agency of the department designated for closure or a department inpatient facility designated for closure.

(c) The member has 25 or more years of credited service, regardless of age, as an employee of an agency of the department designated for closure or a department inpatient facility designated for closure.

(6) When a department inpatient facility or agency is designated for closure on or after October 1, 1989, the state officer formerly known as the director of mental health shall certify in writing to the state legislature and the

retirement board, not less than 240 days before the designated official date of closure, which facility or agency is to be closed and the designated official date of closure.

(7) Except as provided in subsection (8), a member who is eligible to receive a retirement allowance under subsection (5) may retire effective on the date that an agency of the department or a department inpatient facility designated for closure as provided in subsection (5) actually closes, upon written application to the retirement board not less than 30 or more than 180 days before the designated official date of closure. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1).

(8) A member who is on layoff status, is not working for the state, and becomes eligible to receive a retirement allowance under subsection (5) and who was an employee of an agency of the department or a department inpatient facility that has been designated for closure as provided in subsection (5) and that actually closes on or after October 1, 1989, may retire upon written application to the retirement board, stating a date upon which he or she wishes to retire. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1).

(9) Any additional accrued actuarial cost and costs for health insurance resulting from the implementation of subsection (5) shall be funded from appropriations to the department formerly known as the department of mental health for this purpose.

(10) A member who is an employee of the state accident fund on the date of transfer to a permitted transferee as that term is defined by section 701a of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.701a, may retire if the member's age and his or her length of service is equal to or greater than 70 years on the date of transfer. The member may retire upon written application to the retirement board, stating a date, not less than 30 or more than 90 days after the execution and filing of the application, on which he or she desires to retire. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1) without regard to the reduction required by subsection (2).

(11) A member who is an employee of the Michigan biologic products institute on the date the institute is conveyed pursuant to the Michigan biologic products institute transfer act, 1996 PA 522, MCL 333.26331 to 333.26340, may retire if the member's age and his or her length of service is equal to or greater than 70 years on the date of the conveyance. The member may retire upon written application to the retirement board, stating a date, not less than 30 or more than 90 days after the execution and filing of the application, on which he or she desires to retire. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1) without regard to the reduction required by subsection (2).

(12) A member who is an employee of the liquor control commission created by section 209 of the Michigan liquor control code of 1998, 1998 PA 5, MCL 436.1209, whose employment is terminated due to the privatization of the distribution of spirits within this state is effectuated pursuant to the resolution and order adopted by the liquor control commission on February 7, 1996, a plan adopted pursuant to statute or court order, or a plan adopted pursuant to both statute and order of the liquor control commission may retire if the member's age and his or her length of service is equal to or greater than 70 years on the date the privatization is effectuated. The member may retire under this subsection upon written application to the retirement board, stating a date, not less than 30 or more than 90 days after the execution and filing of the application, on which he or she desires to retire. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance computed according to section 20(1), without regard to the reduction required by subsection (2). The cost of benefits paid under this section shall be paid out of the revolving fund created under section 221 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1221.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.19 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1986, Act 1, Imd. Eff. Jan. 28, 1986 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 1988, Act 405, Eff. Jan. 1, 1989 ;-- Am. 1989, Act 297, Imd. Eff. Jan. 3, 1990 ;-- Am. 1993, Act 195, Eff. Dec. 28, 1994 ;-- Am. 1996, Act 521, Imd. Eff. Jan. 13, 1997 ;-- Am. 1998, Act 205, Eff. Aug. 1, 1998 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** Section 2 of Act 195 of 1993 provides as follows:"Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

**38.19a Retirement upon satisfaction of certain requirements; monthly retirement allowance supplement; benefits, salary, or remuneration precluding payment under subsection (2); payment of sick leave; payment by retirement system; amount payable by principal departments; member considered retirant; deposit by principal department; use of deposits; exception; monthly payment by Michigan employment security**

**commission; service credit for participation in pay reduction plan C; death of retirant or applicant for retirement.**

Sec. 19a.

(1) Notwithstanding section 19, a member who is employed by the state on May 1, 1984 may retire and receive a retirement allowance computed according to section 20 if the member satisfies all of the following requirements:

(a) On the effective date of his or her retirement, 1 of the following applies:

(i) The member has attained age 60 and has 10 or more years of credited service.

(ii) The member's combined age and length of credited service is equal to or greater than 80 years, and the member has attained age 50.

(b) The member is not a supplemental member as defined in section 45.

(c) The member was employed by the state for the 6-month period immediately preceding May 1, 1984. This subdivision shall not apply to a member who had been restored to active service during that 6-month period pursuant to section 33.

(d) The member files a written application with the retirement board, on or after May 1, 1984 but not later than June 1, 1984, stating a date, which date shall be on or after June 2, 1984 but not later than September 30, 1984, on which he or she desires to retire.

(e) The member agrees to the conditions stated in subsection (3).

(2) A member who retires under this section, and who at the time of his or her retirement has not attained age 62 years, shall receive a monthly retirement allowance supplement for each month, including any fraction of a month, until the retirant attains age 62 years. The amount of the monthly retirement allowance supplement shall be based upon the annual rate of base salary of the retirant as of the pay period immediately preceding the date of retirement, according to the following schedule:

| Annual Base Salary | Monthly Retirement Allowance Supplement |
|---|---|
| Less than $10,000.00 | $240.00 |
| At least $10,000.00 but not more than $19,999.99 | $280.00 |
| At least $20,000.00 but not more than $29,999.99 | $320.00 |
| At least $30,000.00 | $360.00 |

A payment shall not be made under this subsection for any month for which the retirant is paid, on account of his or her state employment, worker's compensation benefits, unemployment compensation benefits, long or short term disability benefits, federal social security benefits, Michigan state employees' retirement system disability benefits, state salary, or receiving remuneration for any contractual services provided to the state certified under section 18(1)(d) of former Act No. 18 of the Public Acts of 1981.

(3) Any amount which a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

(4) Payment of retirement allowances, retirement allowance supplements, and installment payments on account of accumulated sick leave to retirants under this section shall be made by the retirement system. Except as provided in subsection (7), each principal department shall pay to the retirement system for employees of that department who retire under this section an amount sufficient to cover all of the following:

(a) Retirement allowances payable to each individual who retires under this section before having attained age 60 years, until the retirant attains age 60 years, or in the event of a survivor allowance payable under section 31(1)(a), until the retirant would have attained age 60 years. This amount shall be paid from the account established in that department under subsection (6). In the absence of sufficient funds in the account established under subsection (6), this amount shall be paid from other funds available to the department.

(b) Retirement allowance supplements payable under this section. This amount shall be paid from the account established in that department under subsection (6). In the absence of sufficient funds in the account established under subsection (6), this amount shall be paid from other funds available to the department.

(c) Installment payments on account of accumulated sick leave payable under subsection (3). This amount shall be paid from money available to the department for that purpose.

(5) Notwithstanding section 1h(2), a member who retires under this section shall be considered a retirant for purposes of receiving benefits under this act.

(6) Except as otherwise provided in this subsection, each principal department shall deposit into a separate departmental account the 1983-84 and 1984-85 fiscal year appropriations for salaries, wages, longevity payments, group insurance payments, retirement fund contributions, and social security employer contributions, which would have been paid to or on behalf of each employee who retires under this section, for use as follows:

(a) Payments to the retirement system as provided in subsection (4)(a) and (b) shall be made from the account.

(b) Installment payments to a retirant under subsection (3) and payments to the retirement system under

subsection (4)(c) shall not be made from the account.

(c) Expenditures may be made from the account as provided in section 33 of former Act No. 18 of the Public Acts of 1981.

Deposits shall not be required under this subsection for employees of the Michigan employment security commission who retire under this section.

(7) The Michigan employment security commission shall pay to the retirement system monthly, from money available to that commission, an amount sufficient to cover the items enumerated in subsection (4)(a), (b), and (c), for employees of the Michigan employment security commission who retire under this section.

(8) For the purpose of qualifying for retirement under subsection (1)(a), or receiving a retirement allowance under this section, or both, a member who participated in pay reduction plan C may receive service credit for such leave of absence upon payment to the retirement system of an amount actuarially determined by the board, but which shall be not less than 5% of the member's full-time biweekly compensation for the fiscal year in which payment is made multiplied by the number of biweekly pay periods for which the member participated in pay reduction plan C and which the member is eligible to purchase under this subsection. For purposes of this subsection, "pay reduction plan C" means the plan available to a member during the fiscal years ending on or after September 30, 1981, under which the member may elect to take a leave of absence without pay for a duration of not less than 1 pay period. A member shall not be eligible to receive service credit under this subsection for more than 13 biweekly pay periods.

(9) If a person who retired under this section dies after the effective date of his or her retirement but before having attained age 62 years, the monthly retirement allowance supplement otherwise payable to the retirant under subsection (2) shall be paid as follows:

(a) Except as provided by subdivision (b), to the person or persons nominated for that purpose by the retirant by written designation duly executed and filed with the board. Payment shall be made by monthly installments in the manner provided under subsection (2), until the retirant would have attained age 62 years.

(b) If the retirant failed to execute and file a written nomination or nominated his or her estate, or if the person or persons nominated predecease the retirant, to the retirant's personal representative in a lump sum equal to the difference between the total amount the retirant would have received under subsection (2), had he or she attained age 62 years, and the amount actually received by the retirant under subsection (2).

(10) If a member who is eligible for retirement under this section files an application for retirement under subsection (1)(d) and dies prior to the date on which he or she desires to retire, the monthly retirement allowance supplement otherwise payable under subsection (2) shall be paid as follows:

(a) Except as provided by subdivision (b), to the person or persons nominated for that purpose by the member by written designation duly executed and filed with the board. Payment shall be made by monthly installments in the manner provided under subsection (2), until the member would have attained age 62 years.

(b) If the member failed to execute and file a written nomination or nominated his or her estate, or if the person or persons nominated predecease the member, to the member's personal representative in a lump sum equal to the amount the member would have received under subsection (2) had he or she retired and attained age 62 years.

**History:** Add. 1984, Act 3, Eff. May 1, 1984 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995

**38.19b Right to retire and receive retirement allowance computed under MCL 38.20(1); application period; requirements; payment for accumulated sick leave in 60 monthly installments.**

Sec. 19b.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under section 20(1) if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member has met the service requirements to receive a retirement allowance under this act, the member's combined age and amount of credited service is equal to or greater than 70 years, and the member is 50 years of age or older.

(b) The member was employed by this state for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after September 1, 1991, but not later than March 1, 1992, stating a date, which date shall be 30 to 90 days after the execution and filing of the

application but not later than April 1, 1992, on which he or she desires to retire.

(2) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

**History:** Add. 1991, Act 62, Imd. Eff. June 27, 1991

**38.19c Right to retire and receive retirement allowance computed under MCL 38.20(1); application period; requirements; payment for accumulated sick leave in 60 monthly installments.**

Sec. 19c.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under section 20(1) if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member has met the service requirements to receive a retirement allowance under this act and the member's combined age and amount of credited service is equal to or greater than 70 years.

(b) The member was employed by the legislature for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service with the legislature during that 6-month period under section 33 or a member who is on layoff status from the legislature during that 6-month period is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after November 15, 1992, but not later than December 31, 1992, stating a date, which date shall be 30 days or more after the execution and filing of the application but not later than February 1, 1993, on which he or she desires to retire.

(2) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

**History:** Add. 1991, Act 62, Imd. Eff. June 27, 1991 ;-- Am. 1992, Act 64, Imd. Eff. May 28, 1992

**38.19d Right to retire and receive retirement allowance computed under MCL 38.20(1); application period; requirements; payment for accumulated sick leave in 60 monthly installments.**

Sec. 19d.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under section 20(1) if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member has met the service requirements to receive a retirement allowance under this act and the member's combined age and amount of credited service is equal to or greater than 70 years.

(b) The member was employed by the legislature for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service with the legislature during that 6-month period under section 33 or a member who is on layoff status from the legislature during that 6-month period is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after November 15, 1994, but not later than December 31, 1994, stating a date, which date shall be 30 days or more after the execution and filing of the application but not later than February 1, 1995, on which he or she desires to retire.

(2) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

**History:** Add. 1991, Act 62, Imd. Eff. June 27, 1991 ;-- Am. 1992, Act 64, Imd. Eff. May 28, 1992

**38.19e Right to retire and receive retirement allowance computed under MCL 38.20(1); application period; requirements; payment for amounts entitled to receive at retirement.**

Sec. 19e.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under section 20(1) if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member has met the service requirements to receive a retirement allowance under this act and the member's combined age and amount of credited service is equal to or greater than 70 years.

(b) The member was employed by this state for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after June 1, 1992, but not later than July 15, 1992, stating a date, which date shall be after the execution and filing of the application but not later than August 1, 1992, on which he or she desires to retire.

(2) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments beginning on October 1, 1992. Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated annual leave, deferred hours, longevity or prorated longevity, or any other lump sum payment otherwise payable at retirement shall be paid on or after October 1, 1992 but not later than December 31, 1992.

**History:** Add. 1992, Act 64, Imd. Eff. May 28, 1992

**38.19f Retirement and receipt of retirement allowance; requirements; accumulated sick leave; request to extend effective date of retirement; calculation; state contract prohibited.**

Sec. 19f.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member meets 1 or more of the following:

(i) The member is 60 years of age or older and has 10 or more years of credited service.

(ii) The member is 55 years of age or older and has 15 or more years of credited service.

(iii) The member is 50 years of age or older and has 25 or more years of credited service.

(b) The member was employed by this state for the 6-month period ending on the effective date of his or her retirement or was an employee of the state judicial council on September 30, 1996 as described in section 44a. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after March 1, 1997, but not later than April 30, 1997, stating a date, which date shall be at least 30 days after the execution and filing of the application but not later than June 1, 1997, on which he or she desires to retire. This subdivision is subject to subsection (4).

(d) The member is not employed in a covered position as defined in section 45.

(e) The member is not a conservation officer as described in section 48.

(2) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member meets 1 or more of the following:

(i) The member is 60 years of age or older and has 10 or more years of credited service.

(ii) The member is 55 years of age or older and has 15 or more years of credited service.

(iii) The member is 50 years of age or older and has 25 or more years of credited service.

(b) The member was employed by the legislature for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after December 15, 1996, but not

later than April 30, 1997, stating a date, which date shall be at least 30 days after the execution and filing of the application but not later than June 1, 1997, on which he or she desires to retire.

(3) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

(4) The director of a principal department may request that the effective date of retirement under subsection (1) of a member employed by that department be extended to a date not later than June 1, 1998. To make such a request, the director shall submit a written request along with the written concurrence of the member to the department of management and budget on or before April 30, 1997. Upon receipt of the written request and concurrence, the department of management and budget may extend the effective date of retirement of a member otherwise eligible to retire under subsection (1) to a date not later than December 31, 1998. Upon written approval of the senate majority leader for a member who is an employee of the senate, the speaker of the house of representatives for a member who is an employee of the house of representatives, the senate majority leader and the speaker of the house of representatives for a member who is an employee of the office of the auditor general, or the chair and alternate chair of the legislative council for a member who is an employee of an agency under the jurisdiction of the legislative council, and upon written concurrence of the member, the effective date of retirement for that member under subsection (2) may be extended to a date not later than December 31, 1998. Upon written approval of the chief justice for a member who is an employee of the judicial branch, including, but not limited to, members described in section 44a, and upon written concurrence of the member, the effective date of retirement for that member under subsection (1) may be extended to a date not later than December 31, 1998. The individual or individuals who approve the extension of an effective date of retirement for a member who is an employee of the legislature, supreme court, or court of appeals shall submit written notification to the office of retirement systems of all extensions approved on or before April 30, 1997.

(5) Upon his or her retirement as provided in this section, a member shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-3/4% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(6) An employee who retires under this section may not be hired under contract by the state for a period of 2 years after the date of separation.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 3, Imd. Eff. Apr. 15, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.19g Member meeting certain requirements on or before November 1, 2002; computation of retirement allowance; payment of accumulated sick leave or annual leave; extension of effective date; participant in Tier 2.

Sec. 19g.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On or before November 1, 2002, or on the effective date of his or her retirement, whichever is earlier, the member meets 1 or more of the following:

(i) The member's combined age and length of credited service is equal to or greater than 80 years.

(ii) The member is 60 years of age or older and has 10 or more years of credited service.

(b) The member is within the classified state civil service, is an employee of the judicial branch, or is an individual not described in subsection (2)(b).

(c) Except as provided in section 13(8), the member was employed by this state for the 6-month period ending on the effective date of his or her retirement or was an employee of the state judicial council on September 30, 1996 as described in section 44a. A member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(d) Except as may be provided otherwise in subsection (5), the member executes and files a written application with the retirement board, on or after April 1, 2002, but not later than April 30, 2002, stating a date on or after July 1, 2002, but not later than November 1, 2002, on which he or she desires to retire. A member may withdraw a written application on or before May 15, 2002 or 7 days after the rejection of an extension requested under subsection (5), whichever is later. A written application submitted by a member and not withdrawn on or before May 15, 2002 or 7 days after the rejection of an extension requested under subsection (5), whichever is later, is irrevocable.

(e) The member is not eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45 on or after July 1, 2002 through the effective date of the member's retirement under this section.

(f) The member is not a conservation officer as described in section 48.

(2) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On or before November 1, 2002, or on the effective date of his or her retirement, whichever is earlier, the member's combined age and length of credited service is equal to or greater than 80 years or the member is 60 years of age or older and has 10 or more years of credited service.

(b) The member is an employee of the legislature, is an employee of the office of governor, or is an unclassified employee within the executive branch.

(c) Except as provided in section 13(8), the member was employed by this state or the legislature for the 6-month period ending on the effective date of his or her retirement. A member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(d) The member executes and files a written application with the retirement board, on or after April 1, 2002, but not later than April 30, 2002, stating a date on or after July 1, 2002, but not later than November 1, 2002, on which he or she desires to retire. A member may withdraw a written application on or before May 15, 2002. A written application submitted by a member and not withdrawn on or before May 15, 2002 is irrevocable. This subdivision is subject to subsection (5).

(e) The member is not eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45 on or after July 1, 2002 through the effective date of the member's retirement under this section.

(f) The member is not a conservation officer as described in section 48.

(3) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments beginning on or after October 1, 2002. Payments received under this subsection may not be used to purchase service credit under this act. These payments for accumulated sick leave are to be paid from funds appropriated to the appointing authority and not from funds of the retirement system. These payments are not pensions, annuities, retirement allowances, optional benefits, or any other rights described in section 40(1), are not exempt from taxation, are subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and may be assignable as provided in this act.

(4) Any amount that a member retiring under this section is entitled to receive in a lump sum at retirement on account of accumulated annual leave shall be paid on or after October 1, 2002. These payments are not pensions, annuities, retirement allowances, optional benefits, or any other rights described in section 40(1), are not exempt from taxation, are subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and may be assignable as provided in this act.

(5) The director of a principal department may request that the effective date of retirement under subsection (1) of a member employed by that department be extended to a date not later than February 1, 2004. To make a request under this subsection, the director shall submit a written request and the written concurrence of the member to the office of the state employer and the state budget office on or before May 31, 2002. Upon receipt of the written request and concurrence, the office of the state employer and the state budget office may extend the effective date of retirement of a member otherwise eligible to retire under subsection (1) to a date not later than February 1, 2004. Upon written approval of the senate majority leader for a member who is an employee of the senate, the speaker of the house of representatives for a member who is an employee of the house of representatives, the senate majority leader and the speaker of the house of representatives for a member who is an employee of the office of the auditor general, director or chair of the legislative retirement system for a member who is an employee of the legislative retirement system, or the chair and alternate chair of the legislative council for a member who is an employee of an agency under the jurisdiction of the legislative council, and upon written concurrence of the member, the effective date of retirement for that member under subsection (2) may be extended to a date not later than February 1, 2004. Upon written approval of the chief justice for a member who is an employee of the judicial branch, including, but not limited to, members described in section 44a, and upon written concurrence of the member, the effective date of retirement for that member under subsection (1) may be extended to a date not later than February 1, 2004. The individual or individuals who approve the extension of an effective date of retirement for a member who is an employee of the legislature, supreme court, or court of appeals shall submit written notification to the office of retirement services of all extensions approved on or before May 31, 2002.

(6) Upon his or her retirement as provided in this section, a member who did not make an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-3/4% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction

pursuant to section 19(2).

(7) Upon his or her retirement as provided in this section, a former member who made an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1/4% of his or her final average compensation. Except for the calculation provided in this subsection, the former member's retirement allowance is subject to section 20. The former member's retirement allowance is not subject to reduction pursuant to section 19(2).

(8) For purposes of this section, an individual who elected to terminate membership under section 50 and who, but for that election, would otherwise be eligible for membership in Tier 1 under section 13, shall be considered a member of Tier 1 for the limited purpose of receiving a retirement allowance calculated under this section and paid by the retirement system.

**History:** Add. 2002, Act 93, Imd. Eff. Mar. 27, 2002

### 38.19h Payments not tax exempt and subject to certain operations of law.

Sec. 19h.

Payments made after September 30, 1991, under sections 19b(2), 19c(2), 19d(2), 19e(2), and 19f(3) are not pensions, annuities, retirement allowances, optional benefits, or any other rights described in section 40(1), are not exempt from taxation, are subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and may be assignable as provided in this act.

**History:** Add. 2002, Act 93, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Enacting section 1 of Act 93 of 2002 provides:"Enacting section 1. The provisions of section 19h of the state employees' retirement act, 1943 PA 240, as added by this amendatory act, are curative and intended to correct any misinterpretation of legislative intent in the Michigan court of appeals decisions in Stone v State of Michigan, Department of Treasury, docket no. 217485, and in Liken v State of Michigan, Department of Treasury, docket no. 222588. This legislation expresses the original intent of the legislature that payments under sections 19b(2), 19c(2), 19d(2), 19e(2), and 19f(3) of the state employees' retirement act, 1943 PA 240, MCL 38.19b, 38.19c, 38.19d, 38.19e, and 38.19f were not made by the retirement system and were not pensions, annuities, retirement allowances, optional benefits, or any other rights described in section 40(1) of the state employees' retirement act, 1943 PA 240, MCL 38.40, are not exempt from taxation, are subject to executions, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and may be assignable as provided in the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69."

### 38.19i Retirement allowance; computation; accumulated sick leave; purchase of service credit; hiring under contract; limitation.

Sec. 19i.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On or before December 31, 2002, or on the effective date of his or her retirement, whichever is earlier, the member's combined age and length of credited service is equal to or greater than 75 years, or, if the member has at least 20 years of service credit, the member's combined age and length of credited service is equal to or greater than 65 years.

(b) The member is an employee of the legislature, is an employee of the office of governor, is an employee of the judicial system, or is an unclassified employee within the state civil service.

(c) The member was employed by this state or the legislature for the 30-month period ending on December 1, 2002. A member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(d) The member executes and files a written application with the retirement board, on or after December 1, 2002, but not later than December 31, 2002, stating a date on or after January 1, 2003, but not later than February 1, 2003, on which he or she desires to retire. A member may withdraw a written application on or before January 15, 2003. A written application submitted by a member and not withdrawn on or before January 15, 2003 is irrevocable.

(e) The member is not employed in a covered position as defined in section 45.

(f) The member is not a conservation officer as described in section 48.

(2) If a member meets all of the requirements of subsection (1) except the requirement in subsection (1)(c), the member may retire and receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-1/2% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(3) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments beginning on or after February 1, 2003. Payments received under this subsection may not be used to purchase service credit under this act. These payments for accumulated sick leave are to be paid from funds appropriated to the appointing authority and not from funds of the retirement system. These payments shall be considered taxable income under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(4) Upon his or her retirement as provided in this section, a member who did not make an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-3/4% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(5) Upon his or her retirement as provided in this section, a former member who made an election under section 50 to terminate membership in Tier 1 and become a qualified participant in Tier 2 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1/4% of his or her final average compensation. Except for the calculation provided in this subsection, the former member's retirement allowance is subject to section 20. The former member's retirement allowance is not subject to reduction pursuant to section 19(2).

(6) For purposes of this section, an individual who elected to terminate membership under section 50 and who, but for that election, would otherwise be eligible for membership in Tier 1 under section 13, shall be considered a member of Tier 1 for the limited purpose of receiving a retirement allowance calculated under this section and paid by the retirement system.

(7) An employee who retires under this section shall not be hired under contract by the state for a period of 2 years after the date of separation.

**History:** Add. 2002, Act 743, Imd. Eff. Dec. 30, 2002

**38.19j Retirement; requirements; accumulated annual leave, sick leave, and deferred leave hours; forfeiture; inclusion in calculation for determination of final average compensation; extension; request; retirement allowance calculation; "incentivized retirement application period" defined.**

Sec. 19j.

(1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the last day of the month preceding the effective date of his or her retirement as stated in subdivision (f), the member's combined age and length of credited service is equal to or greater than 80 years, the member's length of credited service is equal to or greater than 30 years, or the member is eligible to retire under section 19 with a retirement allowance that is not subject to reduction under section 19(2).

(b) The member occupies a position in the classified state civil service, has classified state civil service status, or is an individual not described in subsection (2)(b).

(c) The member is not eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45, or if the member is eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45, the member meets the requirements of subsection (6).

(d) The member is not a conservation officer as described in section 48, or if the member is a conservation officer as described in section 48, the member meets the requirements of subsection (6).

(e) The member was employed by this state or the legislature within the 6-month period ending on the first day of the incentivized retirement application period. A member who was laid off or granted an approved leave of absence from state employment within the 12-month period ending on the first day of the incentivized retirement application period is considered to have met the employment requirement of this subdivision.

(f) The member executes and files an application in a manner determined by the retirement system with the retirement board, during the incentivized retirement application period, stating a retirement allowance effective date that is on or after November 1, 2010 but not later than January 1, 2011. A member may withdraw an application on or before the close of the incentivized retirement application period. An application submitted by a member and not withdrawn on or before the close of the incentivized retirement application period is irrevocable.

(2) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the last day of the month preceding the effective date of his or her retirement as stated in subdivision (f), the member's combined age and length of credited service is equal to or greater than 80 years, the member's credited service is equal to or greater than 30 years, or the member is eligible to retire under section 19 with a retirement allowance that is not subject to reduction under section 19(2).

(b) The member is an employee of the legislative branch of state government without classified civil service status, is an employee of the judicial branch of state government, or is an unclassified state employee not within the classified state civil service.

(c) The member is not eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45, or if the member is eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45, the member meets the requirements of subsection (6).

(d) The member is not a conservation officer as described in section 48, or if the member is a conservation officer as described in section 48, the member meets the requirements of subsection (6).

(e) The member was employed by this state within the 6-month period ending on the first day of the incentivized retirement application period. A member who was laid off or granted an approved leave of absence from state employment within the 12-month period ending on the first day of the incentivized retirement application period is considered to have met the employment requirement of this subdivision.

(f) The member executes and files an application in a manner determined by the retirement system with the retirement board, during the incentivized retirement application period, stating a retirement allowance effective date that is on or after November 1, 2010 but not later than January 1, 2011. A member may withdraw an application on or before the close of the incentivized retirement application period. An application submitted by a member and not withdrawn on or before the close of the incentivized retirement application period is irrevocable.

(3) Notwithstanding any other provision of this act, a member retiring under this section agrees that any amount that he or she would otherwise be entitled to receive at retirement on account of accumulated annual leave, sick leave, and other deferred leave hours shall not be paid to the member and shall be forfeited. The value of accrued annual leave up to 240 hours and the value of voluntary and involuntary pay reduction plan B for services rendered on or before October 1, 1981, forfeited under this subsection by a member shall be included in the calculation for the purposes of determining "final average compensation" for that member under this section. This subsection does not apply to banked leave time.

(4) The director of a principal department of the executive branch of state government may request that the effective date of retirement under subsection (1) or (2) of a member employed by that department be extended to a date not later than July 1, 2011. To make a request under this subsection, the director shall submit a written request and the written concurrence of the member to the director of the office of the state employer and the state budget director on or before the close of the incentivized retirement application period. Upon receipt of the written request and concurrence, the director of the office of the state employer and the state budget director may extend the effective date of retirement of a member otherwise eligible to retire under subsection (1) or (2) to a date not later than July 1, 2011. Upon written approval of the senate majority leader for a member who is an employee of the senate, the speaker of the house of representatives for a member who is an employee of the house of representatives, the senate majority leader and the speaker of the house of representatives for a member who is an employee of the office of the auditor general, director or chair of the legislative retirement system for a member who is an employee of the legislative retirement system, or the chair and alternate chair of the legislative council for a member who is an employee of an agency under the jurisdiction of the legislative council, and upon written concurrence of the member, the effective date of retirement for that member may be extended to a date not later than July 1, 2011. Upon written approval of the chief justice for a member who is an employee of the judicial branch, including, but not limited to, members described in section 44a, and upon written concurrence of the member, the effective date of retirement for that member may be extended to a date not later than July 1, 2011. The individual or individuals who approve the extension of an effective date of retirement for a member who is an employee of the legislature, supreme court, or court of appeals shall submit written notification to the office of retirement services of all extensions approved on or before October 29, 2010.

(5) Upon his or her retirement as provided in this section, a member with a retirement allowance effective date on or before January 1, 2011 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.6% of his or her final average compensation if the member's final average compensation is $90,000.00 or less, and the member is eligible to retire under section 19 with a retirement allowance that is not subject to reduction under section 19(2). If the member has a retirement allowance effective date on or before January 1, 2011, the member is eligible to retire under section 19 with a retirement

allowance that is not subject to reduction under section 19(2), and that member has a final average compensation that is greater than $90,000.00, the retirement allowance shall be equal to the member's number of years and fraction of a year of credited service multiplied by 1.6% of his or her final average compensation up to a final average compensation of $90,000.00 and the remaining portion of the retirement allowance shall be equal to the member's number of years and fraction of a year of credited service multiplied by 1.5% of the portion of final average compensation over $90,000.00. For members eligible under this section because the member's combined age and length of credited service is equal to or greater than 80 years or because the member's length of credited service is equal to or greater than 30 years, upon his or her retirement as provided in this section, a member who retires with a retirement effective date on or before January 1, 2011 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.55% of the member's final average compensation if the final average compensation is $90,000.00 or less. For members eligible to retire under this section because the member's combined age and length of credited service is equal to or greater than 80 years or because the member's length of credited service is equal to or greater than 30 years whose final average compensation is greater than $90,000.00, the retirement allowance shall be calculated so that the member receives a portion of his or her retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.55% of his or her final average compensation up to a final average compensation of $90,000.00 and the remaining portion of the retirement allowance shall be calculated as equal to the member's number of years and fraction of a year of credited service multiplied by 1.5% of the portion of final average compensation over $90,000.00. No additional increase in multiplier shall be used based on an extension under subsection (4).

(6) A member who is a conservation officer as described in section 48 or a member who is eligible for a supplemental early retirement under section 46 as a covered employee defined in section 45 may make the election and be eligible for a retirement allowance under this section if the member meets the eligibility requirements of this section. A member who meets the eligibility requirements and makes an election under this section shall receive a retirement allowance calculated under this section and shall not be eligible for any supplemental benefit that he or she may have been eligible for had he or she retired under sections 45 to 48.

(7) Any additional costs to the retirement system as a result of the retirement allowance calculations under this section shall be amortized over a 5-year period.

(8) As used in this section, "incentivized retirement application period" means the period beginning on the effective date of the amendatory act that added this section and ending on November 5, 2010 at 5 p.m. eastern standard time unless the member selects a retirement allowance effective date of November 1, 2010. If the member selects a retirement allowance effective date of November 1, 2010, then the incentivized retirement application period ends on October 22, 2010 at 5 p.m. eastern daylight time.

**History:** Add. 2010, Act 185, Imd. Eff. Sept. 30, 2010
**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.20 Computation of retirement allowance; right to elect option; retirement before age 65; death of retirant; separation from service; department of mental health employee termination; recalculation and payment of retirement allowance; eligibility of state accident fund or Michigan biologic products institute employees to health care benefits and certain rights, privileges, and benefits.**

Sec. 20.

(1) Subject to section 20j, upon his or her retirement, as provided for in section 19, 19a, 19b, 19c, 19d, or 19e, a member shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1-1/2% of his or her final average compensation. The member's retirement allowance is subject to subsection (3). Upon his or her retirement, the member may elect an option provided for in section 31(1).

(2) Pursuant to rules promulgated by the retirement board, a member who retires before becoming 65 years of age may elect to have his or her regular retirement allowance equated on an actuarial basis to provide an increased retirement allowance payable up to his or her attainment of 65 years of age and a reduced retirement allowance payable after his or her attainment of 65 years of age. His or her increased retirement allowance payable up to age 65 shall approximately equal the sum of his or her reduced retirement allowance payable after age 65 and his or her estimated social security primary insurance amount. In addition, upon retirement the member may elect an option provided for in section 31(1).

(3) If a retirant dies before receiving payment of his or her retirement allowance in an aggregate amount equal to the retirant's accumulated contributions credited to the retirant in the employees' savings fund at the time of his or her retirement, the difference between his or her accumulated contributions and the amount of retirement allowance received by him or her shall be paid to the person or persons that he or she nominated by written designation executed and filed with the retirement board. If the person or persons do not survive the retirant, then the difference, if any, shall be paid to the retirant's legal representative or estate. Benefits shall not be paid under this subsection on account of the death of the retirant if he or she elected an option provided for in section 31(1).

(4) If a member has 10 or more years of credited service, or has 5 or more years of credited service as an elected officer or in a position in the executive branch or the legislative branch excepted or exempt from the classified state civil service as provided in section 5 of article XI of the state constitution of 1963, and is separated from the service of the state for a reason other than retirement or death, he or she shall remain a member during the period of absence from the state service for the exclusive purpose of receiving a retirement allowance provided for in this section. If a former employee of the state accident fund who had 5 or more years of service as an employee of the state accident fund returns to employment with the state before receiving a retirement allowance under this act, the employee shall be required to accumulate 10 or more years of credited service before receiving a retirement allowance under this act. If a former employee of the Michigan biologic products institute who is eligible to and has elected to purchase additional credited service pursuant to section 17l(2) returns to employment with the state before receiving a retirement allowance under this act, the employee shall be required to accumulate 10 or more years of credited service, without regard to the additional credited service purchased pursuant to section 17l(2) but including any credited service authorized under section 16, before receiving a retirement allowance under this act. If the member withdraws all or part of his or her accumulated contributions, he or she ceases to be a member. Upon becoming 60 years of age or older, the member may retire upon his or her written application to the retirement board as provided in section 19(1). If a member elects an option as provided under section 31(4), but dies before the effective date of his or her retirement, the option elected by the member shall be carried out, and the beneficiary of the member is entitled to all advantages due under that option.

(5) A person who is a member after January 1, 1981, who has at least 5 years of credited service, and whose employment with the department formerly known as the department of mental health is terminated by reason of reduction in force related to deinstitutionalization that may or may not result in facility closure, shall remain a member during the period of absence from the state service for the exclusive purpose of receiving a service retirement allowance as provided in this subsection. As used in this subsection, "deinstitutionalization" means planned reduction of state center or hospital beds through placement of individuals from the hospital or facility, or through limiting admissions to centers and hospitals, or both. If a member withdraws all or part of the member's accumulated contributions, the member ceases to be a member. Upon becoming 60 years of age or older, the member may retire upon written application to the retirement board. The application shall specify a date on which the member desires to retire. Upon retirement, the member shall receive a retirement allowance equal to the number of years and fraction of a year of credited state service multiplied by 1-1/2% of the member's final average compensation. Upon retirement, the member may elect an option provided in section 31(1). If the member elects an option provided for in section 31(4), but dies before the effective date of retirement, the option elected by the member shall be carried out, and a beneficiary of the member is entitled to all advantages due under the option.

(6) A retirant or the beneficiary of a retirant who retired before July 1, 1974 shall have his or her retirement allowance recalculated based on the retirant's number of years and fraction of a year of credited service multiplied by 1.5% of his or her final average compensation. The retirant or beneficiary is eligible to receive the recalculated retirement allowance beginning October 1, 1987, but is not eligible to receive the adjusted amount attributable to any month beginning before October 1, 1987. The recalculated retirement allowance provided by this subsection shall be paid by January 1, 1988 and shall be the basis on which future adjustments to the allowance, including the supplement provided by section 20h, are calculated. The retirement allowance of a retirant who dies before January 1, 1988, and who did not nominate a retirement allowance beneficiary pursuant to section 31, shall not be recalculated pursuant to this subsection.

(7) Each retirement allowance payable under this act shall date from the first of the month following the month in which the applicant satisfies the age and service or other requirements for receiving the retirement allowance and terminates state service. A full month's retirement allowance is payable for the month in which a retirement allowance ceases.

(8) An employee of the state accident fund who has 5 or more but less than 10 years of credited service as of the effective date of the transfer authorized by section 701a of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.701a, and who is permitted to receive a retirement allowance under subsection (4) is eligible for health care benefits under section 20d on the date of his or her retirement to the same extent as a member with 10 years of credited service who vested on the same date.

(9) An employee of the Michigan biologic products institute who has 5 or more but less than 10 years of credited service as of the effective date of the conveyance authorized by the Michigan biologic products institute transfer act, 1996 PA 522, MCL 333.26331 to 333.26340, and who is permitted to receive a retirement allowance under subsection (4) is eligible for health care benefits under section 20d on the date of his or her retirement to the same

extent as a member with 10 years of credited service who vested on the same date.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- Am. 1945, Act 177, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 351, Eff. Oct. 11, 1947 ;-- CL 1948, 38.20 ;-- Am. 1949, Act 72, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1954, Act 126, Eff. Aug. 13, 1954 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1956, Act 80, Eff. Aug. 11, 1956 ;-- Am. 1958, Act 54, Eff. Sept. 13, 1958 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1982, Act 448, Eff. Mar. 30, 1983 ;-- Am. 1984, Act 3, Eff. May 1, 1984 ;-- Am. 1986, Act 1, Imd. Eff. Jan. 28, 1986 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 1991, Act 62, Imd. Eff. June 27, 1991 ;-- Am. 1993, Act 195, Eff. Dec. 28, 1994 ;-- Am. 1996, Act 521, Imd. Eff. Jan. 13, 1997 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Section 2 of Act 195 of 1993 provides as follows:“Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws.”Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.20a Minimum retirement allowance.

Sec. 20a.

After July 1, 1968 a retirant or a member who subsequently retires under the provisions of this act and who has completed at least 10 years of service shall receive a total retirement allowance of not less than $60.00 multiplied by his or her total number of years, but not to exceed 30 years of service credited to his or her account. Effective January 1, 1988, if the annual retirement allowance of a retirant or retirement allowance beneficiary of a retirant who has 20 or more years of credited service, after recalculation as provided by sections 19(2), 20(6), and 20h, is less than $3,000.00, then the annual retirement allowance shall be increased to $3,000.00.

**History:** Add. 1957, Act 232, Eff. Sept. 27, 1957 ;-- Am. 1968, Act 94, Imd. Eff. June 4, 1968 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987

### 38.20b Increase in monthly retirement allowance; payment.

Sec. 20b.

(1) On July 1, 1972, the monthly retirement allowance payable to a retirant or beneficiary who is on the rolls for June, 1971, is increased as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| August 1, 1970 to July 1, 1971 | 1 |
| August 1, 1969 to July 1, 1970 | 2 |
| August 1, 1968 to July 1, 1969 | 3 |
| August 1, 1967 to July 1, 1968 | 4 |
| August 1, 1966 to July 1, 1967 | 5 |
| August 1, 1965 to July 1, 1966 | 6 |
| August 1, 1964 to July 1, 1965 | 7 |
| August 1, 1963 to July 1, 1964 | 8 |
| August 1, 1962 to July 1, 1963 | 9 |
| August 1, 1961 to July 1, 1962 | 10 |
| August 1, 1960 to July 1, 1961 | 11 |
| August 1, 1959 to July 1, 1960 | 12 |
| August 1, 1958 to July 1, 1959 | 13 |

| | |
|---|---|
| August 1, 1957 to July 1, 1958 | 14 |
| July 1, 1956 to July 1, 1957 | 15 |
| Any time before July 1, 1956 | 25 |

(2) The increases in retirement allowances authorized by this section shall be paid only from the excess of assets in the pension reserve fund which the legislature has been informed is sufficient to cover the increased costs involved without requiring any appropriation of state funds.

**History:** Add. 1971, Act 205, Eff. Mar. 30, 1972

**38.20c Supplement to retirement allowance.**

Sec. 20c.

(1) On July 1, 1974, the monthly retirement allowance payable to a retirant or beneficiary who was on the rolls as such for June, 1973, is supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| July 1, 1972 to June 30, 1973 | 1 |
| July 1, 1971 to June 30, 1972 | 2 |
| July 1, 1970 to June 30, 1971 | 3 |
| July 1, 1969 to June 30, 1970 | 4 |
| July 1, 1968 to June 30, 1969 | 5 |
| July 1, 1967 to June 30, 1968 | 6 |
| July 1, 1966 to June 30, 1967 | 7 |
| July 1, 1965 to June 30, 1966 | 8 |
| July 1, 1964 to June 30, 1965 | 9 |
| July 1, 1963 to June 30, 1964 | 10 |
| July 1, 1962 to June 30, 1963 | 11 |
| July 1, 1961 to June 30, 1962 | 12 |
| July 1, 1960 to June 30, 1961 | 13 |
| July 1, 1959 to June 30, 1960 | 14 |
| Any time before July 1, 1959 | 15 |

(2) The supplement to the retirement allowance provided by this section shall be paid only during those fiscal years for which an appropriation is made which is sufficient to cover the additional payments likely to be made.

**History:** Add. 1974, Act 216, Imd. Eff. July 19, 1974

**38.20d Hospitalization, medical, dental, and vision coverage insurance premium; computation and allocation of cost savings; payment by retirement board; "retirant" defined.**

Sec. 20d.

(1) On and after July 1, 1974, hospitalization and medical coverage insurance premium payable by any retirant or his or her beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department of management and budget shall be paid by the retirement board from the health insurance reserve fund created in section 11. The amount payable shall be in the same proportion of premium payable by the state of Michigan for the classified employees occupying positions in the state civil service. The hospitalization and medical insurance premium payable shall be paid from appropriations made for this purpose to

the health insurance reserve fund sufficient to cover the premium payment needed to be made.

(2) Effective January 1, 1988, 90% of the premium payable by a retirant or the retirant's beneficiary and his or her dependents for dental coverage or vision coverage, or both, under any group plan authorized by the Michigan civil service commission and the department of management and budget shall be paid by the retirement board from the health insurance reserve fund created in section 11.

(3) The department of management and budget shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of 1996 PA 487 over the costs that would have been incurred by this state to fund premiums payable pursuant to section 68 had 1996 PA 487 not been implemented. The total amount of the cost savings, if any, shall be allocated to the health advance funding subaccount created under section 11(9).

(4) On and after March 31, 1997, the retirement system shall also pay health insurance premiums described in this section in the manner prescribed in section 68.

(5) For purposes of this section, "retirant" includes a person who retires under section 306 or 410 of the Michigan military act, 1967 PA 150, MCL 32.706 and 32.810.

**History:** Add. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 1996, Act 532, Imd. Eff. Jan. 13, 1997 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.20e Supplemental retirement allowance; amount; payment.

Sec. 20e.

(1) After December 31, 1980, a retirant or beneficiary of a deceased retirant whose effective date of retirement benefit payable was before July 1, 1956, shall receive a supplemental to his or her retirement allowance in an amount sufficient to produce a total retirement allowance including all other supplements and adjustments of not less than $160.00 multiplied by the retirant's total number of years of retirement service credit.

(2) A supplemental retirement allowance provided by this section shall be paid only during those fiscal years for which an appropriation is made which is sufficient to cover the additional payments likely to be made.

**History:** Add. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1978, Act 148, Imd. Eff. May 18, 1978 ;-- Am. 1980, Act 467, Imd. Eff. Jan. 17, 1981

### 38.20f Supplement to retirement allowance payable on or after September 30, 1976.

Sec. 20f.

(1) The monthly retirement allowance payable to a retirant or beneficiary on or after September 30, 1976, who was on the rolls for April 1, 1978, is supplemented as follows:

| Effective Date of Retirement | Percent Supplemented | |
|---|---|---|
| | 10-1-76 | 10-1-77 |
| July 1, 1975 to June 30, 1976 | 1 | 1 |
| July 1, 1974 to June 30, 1975 | 2 | 2 |
| July 1, 1973 to June 30, 1974 | 3 | 3 |
| July 1, 1972 to June 30, 1973 | 4 | 4 |
| July 1, 1971 to June 30, 1972 | 5 | 5 |
| July 1, 1970 to June 30, 1971 | 6 | 6 |
| July 1, 1969 to June 30, 1970 | 7 | 7 |
| July 1, 1968 to June 30, 1969 | 8 | 8 |
| Before July 1, 1968 | 8 | 8 |

(2) The supplement to the retirement allowance provided by this section shall be paid only during those fiscal years for which an appropriation is made which is sufficient to cover the additional payments likely to be made.

**History:** Add. 1978, Act 148, Imd. Eff. May 18, 1978

**38.20g Determining rate of investment return on retirement system assets and present value of retirement allowances; calculation and reduction of distribution income; crediting distribution units to retirant or retirement allowance beneficiary; calculation and payment of distribution amount; effect of death; increase in retirement allowance; computation of cumulative increase amount; supplemental payment.**

Sec. 20g.

(1) After the end of each state fiscal year, the department of management and budget shall determine the rate of investment return earned on retirement system assets during the fiscal year, based upon methods established by the retirement board.

(2) At the end of each state fiscal year, the retirement system's actuary shall determine the present value of retirement allowances to be paid after the end of the fiscal year to retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal period. The assumed interest rate used in the determination shall be 8% per year, compounded annually.

(3) The distribution income at the end of each state fiscal year shall be equal to the product of the present value of retirement allowances determined in subsection (2) at the end of the previous fiscal year times the positive excess, if any, of the rate of investment return determined in subsection (1) exceeding 8%. The distribution income calculated pursuant to this subsection at the end of the fiscal years 1984-85 and 1985-86 shall be reduced by the costs of postretirement adjustments paid during the fiscal year pursuant to sections 20b, 20c, 20e, and 20f.

(4) After the end of each state fiscal year, each retirant and retirement allowance beneficiary in receipt of a retirement allowance at the end of the fiscal year, and whose effective date of retirement allowance preceded the beginning of that fiscal year, shall be credited with 1 distribution unit for each full year between the effective date of retirement and the end of the fiscal year and 1 distribution unit for each full year of service credit in force on the effective date of retirement. Distribution units shall not accumulate from 1 year to the next year.

(5) The distribution amount for an individual retirant or retirement allowance beneficiary shall be equal to the product of the distribution income determined in subsection (3) times the individual's number of distribution units determined in subsection (4) divided by the total number of distribution units for all eligible retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal year. The distribution amount for an individual retirant or retirement allowance beneficiary of a retirant whose retirement allowance effective date is on or after October 1, 1987 is zero.

(6) The distribution amount for each retirant or retirement allowance beneficiary shall be payable in the form of a supplemental payment prior to the seventh month after the end of the state fiscal year. Except as provided in subsection (9), a distribution amount shall not be payable after March 31, 1988. If a retirant dies before receipt of the distribution amount, the payment shall be made to the retirant's retirement allowance beneficiary, if any. If both the retirant and the retirement allowance beneficiary die before receipt of the distribution amount, no payment shall be made.

(7) Each retirement allowance shall be increased each October 1 beginning with the later of October 1, 1988 or the first October 1 which is at least 12 months after the retirement allowance effective date. The amount of the annual increase shall be equal to 3% of the retirement allowance that would be payable as of the date of the increase without application of this subsection, except that if the member made the election permitted under section 20(2), the increase shall be based on the amount of retirement allowance that would have been paid without application of section 20(2). The annual increase shall not exceed $300.00.

(8) After the end of each state fiscal year, the cumulative increase amount shall be computed for each retirant or retirement allowance beneficiary. The cumulative increase amount shall be equal to the difference between the total retirement allowance paid during the state fiscal year and the retirement allowance that would have been payable without application of subsection (7) and section 20h. The cumulative increase amount for any retirant or retirement allowance beneficiary whose retirement allowance effective date is on or after October 1, 1987 is zero.

(9) In March of each year, beginning in March, 1989, each retirant or retirement allowance beneficiary shall be paid, in a single supplemental payment, the excess, if any, of the distribution amount over the cumulative increase amount for the previous state fiscal year. If a retirant dies before receipt of a supplemental payment, the supplemental payment shall be made to the retirant's retirement allowance beneficiary, if any. If both the retirant and

the retirement allowance beneficiary die before receipt of a supplemental payment, no payment shall be made.

**History:** Add. 1982, Act 256, Imd. Eff. Sept. 30, 1982 ;-- Am. 1984, Act 130, Imd. Eff. June 1, 1984 ;-- Am. 1986, Act 1, Imd. Eff. Jan. 28, 1986 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987

**38.20h Supplemental payments for retirants or retirement allowance beneficiaries with retirement allowance effective date before October 1, 1986; future adjustments.**

Sec. 20h.

(1) Effective October 1, 1987, the monthly retirement allowance payable to a retirant or retirement allowance beneficiary whose retirement allowance effective date was before October 1, 1986, as recalculated pursuant to section 19(2) and 20(6), is supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| October 1, 1985 to September 30, 1986 | 4 |
| October 1, 1984 to September 30, 1985 | 5 |
| October 1, 1983 to September 30, 1984 | 6 |
| October 1, 1982 to September 30, 1983 | 7 |
| October 1, 1981 to September 30, 1982 | 8 |
| October 1, 1980 to September 30, 1981 | 9 |
| October 1, 1979 to September 30, 1980 | 10 |
| October 1, 1978 to September 30, 1979 | 11 |
| October 1, 1977 to September 30, 1978 | 12 |
| October 1, 1976 to September 30, 1977 | 13 |
| October 1, 1975 to September 30, 1976 | 14 |
| October 1, 1974 to September 30, 1975 | 15 |
| October 1, 1973 to September 30, 1974 | 16 |
| October 1, 1972 to September 30, 1973 | 17 |
| October 1, 1971 to September 30, 1972 | 18 |
| October 1, 1970 to September 30, 1971 | 19 |
| October 1, 1969 to September 30, 1970 | 20 |
| October 1, 1968 to September 30, 1969 | 21 |
| October 1, 1967 to September 30, 1968 | 22 |
| October 1, 1966 to September 30, 1967 | 23 |
| October 1, 1965 to September 30, 1966 | 24 |
| October 1, 1964 to September 30, 1965 | 25 |
| October 1, 1963 to September 30, 1964 | 26 |
| October 1, 1962 to September 30, 1963 | 27 |
| October 1, 1961 to September 30, 1962 | 28 |
| October 1, 1960 to September 30, 1961 | 29 |
| Before October 1, 1960 | 30 |

(2) The recalculated retirement allowance shall be the basis on which future adjustments to the allowance are calculated.

(3) The supplement provided by this section shall be calculated pursuant to subsection (1), shall be based on the amount of retirement allowance that would have been paid without application of section 20(2) if the member made the election permitted under section 20(2), and shall be paid by January 1, 1988. The retirement allowance of a retirant who dies before January 1, 1988 and who has not nominated a retirement allowance beneficiary pursuant to section 31 shall not be supplemented pursuant to this section.

(4) In the case of a member who retired pursuant to section 19a, the calculation of the supplement provided by this section shall not include the benefits received under section 19a(2) or (3).

**History:** Add. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987

**38.20i Supplement.**

Sec. 20i.

Upon his or her retirement as provided for in section 19j, beginning January 1, 2011, a member shall receive a supplement for 60 months to his or her retirement allowance payments equal to 1/60 of the amount forfeited in section 19j(3). The total amount of the supplement shall also be treated in the same manner as accumulated contributions credited to the retirant in the employees saving fund for purposes of a calculation performed for this supplement in the same manner as section 20(3). The amounts in this section do not include banked leave time. The employer shall make payments to the retirement system in amounts equal to the supplement required under this section. These payments shall be made from funds appropriated to the appointing authority in a manner determined by the employer.

**History:** Add. 2010, Act 185, Imd. Eff. Sept. 30, 2010
**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.20j Member not making election under MCL 38.50a; calculation of retirement allowance beginning April 1, 2012; items of compensation; accumulation of service credit; member making election under MCL 38.50a(1) and designation under MCL 38.50a(2); calculation of retirement allowance; items of compensation; accumulation of service credit; treatment of member as Tier 1; "attainment date" defined.**

Sec. 20j.

(1) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who did not make the election under section 50a shall include only the following items of credited service, as applicable:
(a) The years and fraction of a year of credited service accrued to that member before April 1, 2012.
(b) Credit for years of service under sections 18(1) and 49(10).
(c) Service credit that was purchased before April 1, 2012.
(d) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of March 31, 2012.
(2) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who did not make the election under section 50a shall include only the following items of compensation:
(a) Compensation received by the member before April 1, 2012.
(b) Up to 240 hours of accrued annual leave paid at separation multiplied by the hourly rate of pay for the member as of March 31, 2012, which for purposes of final average compensation shall be treated as being paid on March 31, 2012.
(3) Beginning on April 1, 2012, a member who did not make the election under section 50a shall continue to accumulate years of service credit after becoming a qualified participant in Tier 2 only as necessary for the purpose of vesting in a retirement allowance and to determine when a retirement allowance under Tier 1 may begin under this act, except as otherwise provided in section 50a(7).
(4) A member who did not make the election under section 50a shall continue to be treated as a member for purposes of Tier 1, except as otherwise provided in section 50a(7) and except for the limitations on credited service and compensation as provided in subsections (1) and (2).
(5) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who makes the election under section 50a(1) and the designation under section 50a(2) shall include only the following items of credited service, as applicable:
(a) The years and fraction of a year of credited service accrued to that member on or before the attainment date.
(b) Credit for years of service under sections 18(1) and 49(10).
(c) Service credit that was purchased on or before the attainment date.
(d) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of the

attainment date.

(6) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who makes the election under section 50a(1) and the designation under section 50a(2) shall include only the following items of compensation:

(a) Compensation received by the member on or before the attainment date.

(b) Up to 240 hours of accrued annual leave paid at separation multiplied by the hourly rate of pay for the member as of the attainment date, which for purposes of final average compensation shall be treated as being paid on the attainment date.

(7) Beginning on April 1, 2012, a member who makes the election under section 50a(1) and the designation under section 50a(2) shall continue to accumulate years of service credit after becoming a qualified participant in Tier 2 only as necessary to determine when a retirement allowance under Tier 1 may begin under this act, except as otherwise provided in section 50a(7).

(8) A member who makes the election under section 50a(1) and the designation under section 50a(2) shall continue to be treated as a member for purposes of Tier 1, except as otherwise provided in section 50a(7) and except for the limitations on credited service and compensation as provided in subsections (5) and (6).

(9) As used in this section, "attainment date" means the final day of the pay period in which the member attains 30 years of credited service or the date the member terminates employment, whichever first occurs.

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.21 Duty disability retirement.

Sec. 21.

(1) Except as may be provided otherwise in sections 33 and 34, a member who becomes totally incapacitated for duty because of a personal injury or disease shall be retired, if all of the following apply:

(a) The member, the member's personal representative or guardian, the member's department head, or the state personnel director files an application on behalf of the member with the retirement board no later than 1 year after termination of the member's employment.

(b) The retirement board finds that the member's personal injury or disease is the natural and proximate result of the member's performance of duty.

(c) A medical advisor conducts a medical examination of the member and certifies in writing that the member is mentally or physically totally incapacitated for further performance of duty, that the total incapacitation is probably permanent, and that the member should be retired.

(d) The retirement board concurs in the recommendation of the medical advisor.

(2) Upon appeal to the retirement board, the retirement board, for good cause, may accept an application for a disability retirement allowance not later than 2 years after termination of the member's state employment.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.21 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

### 38.22 Retirement for disability at age 60; service retirement allowance; crediting 10 years of service.

Sec. 22.

Upon retirement for disability, as provided in section 21, a member who has attained age 60 shall receive a service retirement allowance as provided for in section 20. Notwithstanding that he or she may not have 10 years of credited service, he or she shall be credited with 10 years of service.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.22 ;-- Am. 1955, Act

237, Imd. Eff. June 21, 1955 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987

**38.23 Retirement for disability before attaining age 60; benefits.**

Sec. 23.

(1) Upon retirement for disability as provided in section 21, a member who is less than 60 years old shall receive a disability retirement allowance calculated under section 20(1). A disability retirement allowance payable under this subsection is payable beginning on the first day of the month following the date the member becomes totally incapacitated for state employment. A disability retirement allowance payable under this subsection shall not be paid before the first day of the month after the later of the following:

(a) Twelve months before the date the application for a disability retirement allowance was filed with the retirement system under section 21.

(b) The date the disability retirant's name last appeared on the state payroll with pay.

(2) Upon attaining age 60 years, a disability retirant under subsection (1) shall receive a retirement allowance calculated under section 20. For the purpose of calculating that retirant's retirement allowance, the retirant shall be given membership service credit for the period during which the retirant was receiving the disability retirement allowance provided for in subsection (1). If the computation results in a retirement allowance less than the disability retirement allowance provided in subsection (1), the retirant shall receive a retirement allowance equal to the disability retirement allowance provided in subsection (1). Upon attaining age 60, the retirant may elect an option provided for in section 31(1).

(3) During the period a disability retirant is receiving a disability retirement allowance under subsection (1), the retirant's contributions to the employees' savings fund shall be suspended and the balance in the fund, that is credited to the retirant as of the date the disability retirement allowance begins, shall remain in the savings fund and shall be accumulated at regular interest. Upon attaining age 60 years, the disability retirant's accumulated contributions shall be transferred from the employees' savings fund to the pension reserve fund. If the disability retirant should die before attaining age 60 years, the accumulated contributions standing to the disability retirant's credit in the employees' savings fund shall be paid to the person or persons the disability retirant nominated by written designation executed and filed with the retirement system, or if there is not a designated person or persons surviving, then to the disability retirant's legal representative or estate.

(4) The disability retirement allowance payable to a disability retirant under this section shall not be less than $6,000.00 per year. A disability retirement allowance first payable to a disability retirant under this section shall not be more than an amount that when added to the worker's compensation benefits payable to the disability retirant exceeds the disability retirant's final compensation.

(5) If the disability retirant who retired under section 21 dies before reaching age 60, the retirement allowance payable to the beneficiary designated by the disability retirant shall be calculated as provided in section 20(1). For the purpose of calculating the retirement allowance payable to the beneficiary designated by the disability retirant, the deceased retirant shall be given membership service credit for the period during which the retirant was receiving the disability retirement allowance provided for in subsection (1).

(6) The receipt of a disability retirement allowance under this section is subject to sections 33 and 34.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.23 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1954, Act 126, Eff. Aug. 13, 1954 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1978, Act 91, Imd. Eff. Mar. 31, 1978 ;-- Am. 1983, Act 157, Imd. Eff. July 24, 1983 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 2004, Act 109, Imd. Eff. May 20, 2004

**38.24 Non-duty disability retirement.**

Sec. 24.

(1) Except as may otherwise be provided in sections 33 and 34, a member who becomes totally incapacitated for duty because of a personal injury or disease that is not the natural and proximate result of the member's performance of duty may be retired if all of the following apply:

(a) The member, the member's personal representative or guardian, the member's department head, or the state personnel director files an application on behalf of the member with the retirement board no later than 1 year after

termination of the member's state employment.

(b) A medical advisor conducts a medical examination of the member and certifies in writing that the member is mentally or physically totally incapacitated for further performance of duty, that the incapacitation is likely to be permanent, and that the member should be retired.

(c) The member has been a state employee for at least 10 years.

(2) Upon appeal to the retirement board, the retirement board, for good cause, may accept an application for a disability retirement allowance not later than 2 years after termination of the member's state employment.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.24 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002

### 38.25 Retirement for disability.

Sec. 25.

Upon retirement for disability, as provided in section 24, a member shall receive a retirement allowance computed in accordance with section 20(1). The retirement allowance or pension provided shall not be less than $600.00 per annum. Upon retirement, the member may elect an option provided for in section 31(1).

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.25 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1986, Act 1, Imd. Eff. Jan. 28, 1986

### 38.26 Repealed. 1955, Act 237, Eff. Oct. 24, 1955.

**Compiler's Notes:** The repealed section provided for non-duty disability retirement allowance to public employees before age 60.

### 38.27 Death resulting from personal injury or disease arising out of and in course of state employment; survivor benefits.

Sec. 27.

(1) Except as provided in subsections (3), (4), and (5), if a member dies as a result of a personal injury or disease arising out of and in the course of his or her employment with the state and the personal injury or disease resulting in death is found by the retirement board to have been the sole and exclusive result of employment with the state, the surviving spouse shall receive a retirement allowance calculated as if the deceased member had retired effective the day before the date of death, elected option A under section 31(1), and nominated his or her spouse as retirement allowance beneficiary. The retirement allowance shall be calculated under section 20(1) based upon the amount of the deceased member's credited service. If the deceased member does not have the minimum number of years of credited service needed to vest in the retirement system, the amount of service necessary to reach that amount of credited service shall be granted.

(2) The retirement allowance payable to a surviving spouse under this section shall not be less than $6,000.00 per year. The retirement allowance first payable to a surviving spouse under subsection (1) shall not be more than an amount that, when added to the statutory worker's disability compensation benefits payable to the surviving spouse of the deceased member, equals the deceased member's final compensation.

(3) If the requirements of subsection (1) are met but the deceased member is survived by a spouse and a child or children under 21 years of age, then the retirement allowance calculated under subsections (1) and (2) shall be payable as follows:

(a) One-half to the surviving spouse.

(b) One-half to the surviving child or children under 21 years of age, in equal shares. The retirement allowance payable to a surviving child under this subsection shall terminate upon that child's marriage, death, or becoming 21

years of age, whichever occurs first. That child's share of the terminated retirement allowance shall be redistributed among the remaining children under 21 years of age, if any. When there are no surviving children entitled to a share of the retirement allowance under this subsection, the children's share shall revert to the surviving spouse.

(4) If the requirements of subsection (1) are met and the deceased member is not survived by a spouse but is survived by a child or children under 21 years of age, then the retirement allowance calculated under subsections (1) and (2) shall be paid to the surviving child or children in equal shares. The retirement allowance payable to a surviving child under this subsection shall terminate upon that child's marriage, death, or becoming 21 years of age, whichever occurs first. That child's share of the terminated retirement allowance shall be redistributed among the remaining children under 21 years of age, if any.

(5) If the other requirements of subsection (1) are met and neither a surviving spouse nor an eligible child surviving the deceased member or duty disability retirant exists, a monthly allowance shall be paid to 1 surviving dependent parent whom the retirement board finds to be totally and permanently disabled and to have been dependent upon the deceased member or retirant for at least 50% of the parent's financial support. Subject to section 20j, the allowance shall be computed in the same manner as if the deceased member or retirant had retired for reasons of age and service effective the day preceding the member's or retirant's death, elected the option provided in section 31(1)(a), and nominated the surviving parent as retirement allowance beneficiary. The surviving parent's beneficiary retirement allowance shall terminate upon marriage or death.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.27 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1954, Act 126, Eff. Aug. 13, 1954 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1986, Act 25, Imd. Eff. Mar. 10, 1986 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 2004, Act 109, Imd. Eff. May 20, 2004 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.27a Retirement allowances granted under MCL 38.27; adjustment.

Sec. 27a.

(1) Beginning with retirement allowance payments due on or after June 1, 2004, retirement allowances granted under section 27 that began before the effective date of the amendatory act that added this section shall be adjusted as provided in this section.

(2) Except as otherwise provided in this section, a retirement allowance shall not be less than $6,000.00 per year.

(3) A portion of a retirement allowance payable to a surviving child or parent shall not be less than that portion of a retirement allowance that the child or parent was entitled to receive under section 27 before the effective date of the amendatory act that added this section.

**History:** Add. 2004, Act 109, Imd. Eff. May 20, 2004

### 38.28 Withdrawal of member before retirement; refund of contributions; restoration on re-employment; court administrator.

Sec. 28.

Should a member cease to be an employee before attaining age 60 years, or after attaining such age but before becoming eligible for a retirement allowance, for any reason except his retirement or death, or should a member be granted military leave as prescribed by the rules of the civil service commission, he shall be paid his accumulated contributions standing to his credit in the employees' savings fund, as he shall demand in writing upon forms furnished by the retirement board, subject to section 30. Any person who has withdrawn his accumulated contributions, as provided for in this section, and who again becomes a member, may restore to the employees' savings fund the amount previously withdrawn by him, together with regular interest from the date of withdrawal to the date of repayment. If the constitutional court administrator becomes a member of the judges' retirement system established by Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.830 of the

Compiled Laws of 1948, he shall thereupon cease to be a member of this retirement system, regardless of his age, and his accumulated contributions standing to his credit in the employees' savings fund shall be returned to him.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.28 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1965, Act 267, Imd. Eff. July 21, 1965

**38.29 Death before retirement; refund of contributions.**

Sec. 29.

Should a member die before his service retirement becomes effective, the accumulated contributions standing to his credit in the employees' savings fund, at the time of his death, shall be paid, except as otherwise provided in this act, to such person or persons as he shall have nominated by written designation duly executed and filed with the retirement board, or if there be no such designated person or persons, then to his legal representative.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.29 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955

**38.30 Withholding refund of contributions.**

Sec. 30.

Board may withhold refunds of contributions. The retirement board may, in its discretion, withhold payment of all or part of a member's contributions for not more than 6 months after a member has ceased to be an employe.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.30

**38.31 Election of regular retirement allowance or reduced retirement allowance; payment options; designation of beneficiary; effect of beneficiary's death or divorce; request by nonduty disability retirant to change elections; death of member before effective date of retirement.**

Sec. 31.

(1) Except as provided in subsection (6), before the effective date of retirement, but not after the effective date of retirement, a member or deferred member who is eligible for retirement, as provided in this act, shall elect to receive his or her benefit in a retirement allowance payable throughout life, which shall be called a regular retirement allowance, or to receive the actuarial equivalent at that time of his or her regular retirement allowance in a reduced retirement allowance payable throughout the lives of the retirant and a retirement allowance beneficiary, pursuant to 1 of the following payment options:

(a) Option A. Upon the retirant's death, his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(b) Option B. Upon the retirant's death, 1/2 of his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(c) Option C. On and after January 1, 2000, upon the retirant's death, 3/4 of his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement.

(2) Except as provided in subsections (3) and (8), the election of a payment option under subsection (1) shall not

be changed on or after the effective date of the retirement allowance. A retirement allowance beneficiary designated under this section shall not be changed on or after the effective date of the retirement allowance, and shall be either a spouse, brother, sister, parent, child, including an adopted child, or grandchild of the person making the designation. Payment to a retirement allowance beneficiary shall begin on the first day of the month following the death of the retirant or member.

(3) If the retirement allowance beneficiary named under a payment option under subsection (1) predeceases the retirant, the retirant's benefit shall revert to the regular retirement allowance, effective with the first day of the month following the retirement allowance beneficiary's death. For a retirant whose effective date of retirement was on or before June 28, 1976, this subsection shall apply, but the regular retirement allowance is not payable for any month beginning before the later of the retirement allowance beneficiary's death or January 1, 1986. A retirant who on January 1, 1986 is receiving a reduced retirement allowance because the retirant designated a retirement allowance beneficiary and the retirement allowance beneficiary predeceased the retirant is eligible to receive the regular retirement allowance beginning January 1, 1986, but the regular retirement allowance is not payable for any month beginning before January 1, 1986.

(4) A member who continues in the employ of this state on and after the date he or she acquires 10 years of service credit or becomes eligible for deferred retirement as provided by section 20(4) or (5), whichever occurs first, may by written declaration executed and filed with the retirement board elect option A, provided for in subsection (1)(a), and nominate a retirement allowance beneficiary in the same manner as if the member were then retiring from service, notwithstanding that the member may not have attained 60 years of age. If the beneficiary's death or divorce from the member occurs before the effective date of the member's retirement, the member's election of option A and nomination of retirement allowance beneficiary shall be automatically revoked and the member may again elect option A and nominate a retirement allowance beneficiary at any time before the effective date of retirement. If a member who has made an election and nominated a retirement allowance beneficiary as provided in this subsection dies before the effective date of his or her retirement, then the retirement allowance beneficiary shall immediately receive the retirement allowance that he or she would have been entitled to receive under option A if the member had been regularly retired on the date of the member's death. Except as otherwise provided by subsection (5), if a member who has made an election under this subsection subsequently retires under this act, his or her election of option A shall take effect at the time of retirement. Subject to the requirements of subsection (5), the member, before the effective date of retirement, but not after the effective date of retirement, may revoke his or her previous election of option A and elect to receive his or her retirement allowance as a regular retirement allowance or under option B or C as provided for in subsection (1). A retirement allowance shall not be paid under this subsection on account of the death of a member if any benefits are paid under section 27 on account of his or her death. If a deferred member who has an option A election in effect dies before the effective date of his or her retirement, the retirement allowance payable under option A shall be paid to the retirement allowance beneficiary at the time the deceased deferred member otherwise would have been eligible to begin receiving benefits.

(5) If a member, deferred member, retiring member, or retiring deferred member is married at the effective date of the retirement allowance, an election under this section, other than an election of a payment option under subsection (1) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse. However, this requirement may be waived by the retirement board if the signature of a spouse cannot be obtained because of extenuating circumstances. As used in this subsection, "spouse" means the person to whom the member, deferred member, retiring member, or retiring deferred member is married at the effective date of the retirement allowance.

(6) Until July 1, 1991, upon request in a form as determined by the retirement board, a nonduty disability retirant who retired under section 24 may change his or her election to receive a disability retirement allowance computed as a regular retirement allowance and elect to receive the actuarial equivalent at the time of the election pursuant to this subsection of his or her disability retirement allowance in a reduced retirement allowance payable to the retirant and the retirant's spouse pursuant to the provisions of a payment option as provided in subsection (1), if the disability retirement allowance effective date was before November 12, 1985 and the retirant had 25 or more years of credited service on the disability retirement allowance effective date. The nonduty disability retirant shall begin to receive the reduced retirement allowance under this subsection effective the first day of the month following the month in which the retirant makes the election pursuant to this subsection. As used in this subsection, "spouse" means the person to whom the nonduty disability retirant was married on the effective date of his or her disability retirement allowance and on the date the retirant makes the election pursuant to this subsection.

(7) If a member who continues in the employ of this state on and after the date he or she acquires 10 years of service credit, or on and after the date he or she becomes eligible for deferred retirement as provided by section 20(4) or (5), whichever occurs first, and who does not have an election of option A in force as provided in subsection (4), dies before the effective date of retirement and leaves a surviving spouse, the spouse shall receive a retirement allowance computed in the same manner as if the member had retired effective the day before the date of his or her death, elected option A, and nominated the spouse as retirement allowance beneficiary. When the retirement allowance beneficiary dies, his or her retirement allowance shall terminate. If the aggregate amount of

retirement allowance payments received by the beneficiary is less than the accumulated contributions credited to the member's account in the employees' savings fund at the time of the member's death, the difference between the accumulated contributions and the aggregate amount of retirement allowance payments received by the beneficiary shall be transferred from the employer's accumulation fund or pension reserve fund to the employees' savings fund and paid pursuant to section 29. A retirement allowance shall not be paid under this subsection on account of the death of a member if benefits are paid under section 27 on account of his or her death. If the other requirements of this subsection are met but a surviving spouse does not exist, each of the deceased member's surviving children less than 18 years of age shall receive an allowance of an equal share of the retirement allowance that would have been paid to the spouse if living at the time of the deceased member's death. Payments under this subsection shall cease upon the surviving child's marriage, adoption, or becoming 18 years of age, which occurs first.

(8) If a retirant receiving a reduced retirement allowance under a payment option under subsection (1) is divorced from the spouse who had been designated as the retirant's retirement allowance beneficiary under the option, the election of the payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in the public employee retirement benefit protection act and dated after June 27, 1991 provides that the election of the payment option under subsection (1) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a payment option under subsection (1) is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a regular retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement allowance shall revert to a regular retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.31 ;-- Am. 1949, Act 72, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 200, Imd. Eff. June 14, 1951 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1968, Act 111, Eff. Nov. 15, 1968 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1976, Act 176, Imd. Eff. June 29, 1976 ;-- Am. 1985, Act 151, Imd. Eff. Nov. 12, 1985 ;-- Am. 1986, Act 1, Imd. Eff. Jan. 28, 1986 ;-- Am. 1990, Act 110, Eff. Apr. 1, 1991 ;-- Am. 1990, Act 177, Imd. Eff. July 2, 1990 ;-- Am. 1991, Act 48, Imd. Eff. June 27, 1991 ;-- Am. 1998, Act 205, Eff. Aug. 1, 1998 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2002, Act 99, Imd. Eff. Mar. 27, 2002

### 38.32 Remarriage of surviving spouse.

Sec. 32.

The remarriage of a surviving spouse shall not render the surviving spouse ineligible to receive a retirement allowance described in section 27 or 31(c). A surviving spouse whose retirement allowance described in section 27 or 31(c) was terminated due to the surviving spouse's remarriage shall be eligible to receive that allowance beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the allowance attributable to any month beginning before the month of reinstatement under this section.

**History:** Add. 1986, Act 25, Imd. Eff. Mar. 10, 1986
**Compiler's Notes:** Former MCL 38.32, providing that retirement benefits be offset by workmen's compensation or similar benefits, was repealed by Act 237 of 1955.

### 38.33 Disability retirant under age 60; medical examination required; reduction of retirement allowance on account of gainful employment.

Sec. 33.

(a) The retirement board may, and upon the application of anyone retired pursuant to section 21, 24, or 67a shall, require anyone retired under section 21, 24, or 67a who has not attained age 60 years to undergo a medical examination. The retirement board shall not require a person retired under section 21, 24, or 67a to undergo more than 1 medical examination in any calendar year. The examination is to be made by or under the direction of the medical advisor at the retirant's place of residence or other place mutually agreed upon. Should anyone retired under section 21, 24, or 67a who has not attained age 60 years refuse to submit to the medical examination, his or her disability retirement allowance or supplemental benefit provided for in section 67a may be discontinued until his or her withdrawal of the refusal. If the refusal continues for 1 year, all rights in and to his or her disability retirement allowance or supplemental benefit provided for in section 67a may be revoked by the retirement board. If upon the medical examination of a person retired under section 21, 24, or 67a, the medical advisor reports and his or her report is concurred in by the retirement board, that the person retired under section 21, 24, or 67a is physically capable of resuming employment, he or she shall be restored to active service with the state and his or her disability retirement allowance or supplemental benefit provided for in section 67a shall cease.

(b) If the secretary reports and certifies to the retirement board that a person retired under section 21, 24, or 67a is engaged in a gainful occupation paying more than the difference between his or her disability retirement allowance and his or her final compensation, and if the retirement board concurs in the report, then his or her retirement allowance shall be reduced to an amount which together with the amount earned by him or her shall equal his or her final compensation. Should the earnings of the person retired under section 21, 24, or 67a be later changed, the amount of his or her retirement allowance shall be further modified in like manner.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.33 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2004, Act 109, Imd. Eff. May 20, 2004

### 38.34 Disability retirant; reinstatement to service, service credits allowable.

Sec. 34.

A disability retirant who has been or shall be reinstated in active service, as provided in section 33, shall from the date of such reinstatement again become a member of the retirement system. Upon reinstatement of such disability retirant to active service, any balance he may have in the pension reserve fund at the time of such reinstatement to active service, shall be transferred from the pension reserve fund to the employees' savings fund and credited to his individual account in the employees' savings fund. Any service, on the basis of which his retirement allowance was computed at the time of his retirement, shall be restored to full force and effect, and, except in the case of retirement for non-duty disability as provided in section 24, he shall be given service credit for the period of time he was out of service due to such disability.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- Am. 1944, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 29, 1944 ;-- CL 1948, 38.34 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955

### 38.35 Contribution of 3% of employee compensation to funding account; "funding account" defined; refund of amounts contributed under subsection (1).

Sec. 35.

(1) Beginning with the first pay date after November 1, 2010 and ending no later than the second pay date after the effective date of the amendatory act that added this phrase, each member and each qualified participant shall contribute an amount equal to 3.0% of the member's or qualified participant's compensation to the appropriate funding account established under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747. The member and qualified participant contributions shall be deducted by the employer and remitted as employer contributions to the funding account in a manner that the state budget office and the retirement system shall determine. The state budget office and the retirement system shall determine a method of deducting the contributions provided for in this section from the compensation of each member and qualified participant for each payroll and each payroll period. As used in this subsection, "funding account" means the appropriate irrevocable trust created in the public employee retirement health care funding act, 2010 PA 77, MCL

38.2731 to 38.2747, for the deposit of funds and the payment of retirement health care benefits.

(2) On or before the beginning date for member contributions under section 35a(1), the state or the retirement system shall refund to members, former members, qualified participants, and former qualified participants who contributed under subsection (1) all amounts contributed under subsection (1), including any actual interest earned on those contributions while being held by this state or the retirement system. The refund shall be included in a payroll warrant issued to that member or qualified participant, or in a separate check issued to that former member or former qualified participant. The state or the retirement system shall permit each member or qualified participant who contributed under subsection (1) to make an election before the payment of the refund to defer his or her refund to an appropriate tax-deferred account.

**History:** Add. 2010, Act 185, Imd. Eff. Sept. 30, 2010 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Former MCL 38.35, which pertained to payroll deduction of contributions to employees' savings fund, was repealed by Act 216 of 1974, Imd. Eff. July 19, 1974.Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.35a Election under MCL 38.50a; contribution.

Sec. 35a.

(1) Beginning with the first pay date after April 1, 2012 and ending upon the member's termination of employment or attainment date, as applicable under section 50a, each member who made the election under section 50a shall contribute an amount equal to 4% of his or her compensation to the employees' savings fund to provide for the amount of retirement allowance that is calculated only on the credited service and compensation received by that member after March 31, 2012. The member shall not contribute any amount under this subsection for any years of credited service accrued or compensation received before April 1, 2012.

(2) The retirement system and state budget director shall determine a method of deducting the contributions provided for in this section from the compensation of each member for each payroll and each payroll period.

(3) The state shall pick up the member contributions required by subsection (1) for all compensation received on or after April 1, 2012. Contributions picked up shall be treated as employer contributions in determining tax treatment under the internal revenue code. The state shall pay these member contributions from the same source of funds that is used in paying compensation to the member.

(4) A member is entitled to the benefit of all contributions made under this section in the same manner as provided under section 11(2).

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.36, 38.37 Repealed. 1974, Act 216, Imd. Eff. July 19, 1974.

**Compiler's Notes:** The repealed sections pertained to payroll deduction of contributions to employees' savings fund.

### 38.38 Annual level percent of payroll contribution rate; determination; basis; report; computation; amortization of unfunded actuarial accrued liability; annual appropriation to retirement system; transfer of

**funds; certification; difference between actual state contributions and product of contribution rates times aggregate compensations paid; submitting difference between estimated and actual aggregate compensation and estimated and actual contribution rate to legislature for appropriation; interest; deposit to health advance funding subaccount.**

Sec. 38.

(1) The annual level percent of payroll contribution rate to finance the benefits provided under this act shall be determined by actuarial valuation pursuant to subsections (2) and (3), upon the basis of the risk assumptions adopted by the retirement board with approval of the department of technology, management, and budget, and in consultation with the investment counsel and the actuary. An annual actuarial valuation shall be made of the retirement system in order to determine the actuarial condition of the retirement system and the required contribution to the retirement system. The actuary shall report to the legislature by April 15 of each year on the actuarial condition of the retirement system as of the end of the previous fiscal year and on the projections of state contributions for the next fiscal year. The actuary shall certify in the report that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used fall within the range of reasonable and prudent assumptions and cost estimates. An annual actuarial gain-loss experience study of the retirement system shall be made in order to determine the financial effect of variations of actual retirement system experience from projected experience.

(2) The contribution rate for monthly benefits payable in the event of the death of a member before retirement or the disability of a member shall be computed using an individual projected benefit entry age normal cost method of valuation.

(3) Except as otherwise provided in this subsection, the contribution rate for benefits shall be computed using an individual projected benefit entry age normal cost method of valuation. For the 1995-96 state fiscal year and for each subsequent fiscal year in which the actuarial accrued liability for health benefits is less than 100% funded, the contribution rate for benefits provided under section 20d shall be computed using a cash disbursement method with the payment schedule for the employer being based upon and applied to the combined payrolls of the employees who are members and qualified participants. Beginning in the fiscal year after the fiscal year in which the actuarial accrued liability for health benefits under section 20d is at least 100% funded by the health advance funding subaccount created under section 11(9), and continuing for each subsequent fiscal year, the contribution rate for health benefits provided under section 20d shall be computed using an individual projected benefit entry age normal cost method of valuation. The contribution rate for service that may be rendered in the current year, the normal cost contribution rate, shall be equal to the aggregate amount of individual entry age normal costs divided by 1% of the aggregate amount of active members' valuation compensation. The unfunded actuarial accrued liability shall be equal to the actuarial present value of benefits reduced by the actuarial present value of future normal cost contributions and the actuarial value of assets on the valuation date. Except as otherwise provided in this subsection, the unfunded actuarial accrued liability shall be amortized in accordance with generally accepted governmental accounting standards over a period equal to or less than 40 years, with the payment schedule for the employer being based upon and applied to the combined payrolls of the employees who are members and qualified participants.

(4) The legislature annually shall appropriate to the retirement system the amount determined pursuant to subsections (2) and (3). The state treasurer shall transfer monthly to the retirement system an amount equal to the product of the contribution rates determined in subsections (2) and (3) times the aggregate amount of active member or qualified participant compensation, as appropriate, paid during that month. Not later than 60 days after the termination of each state fiscal year, the executive secretary of the retirement board shall certify to the director of the department of technology, management, and budget the actual aggregate compensations paid to active members and qualified participants during the preceding state fiscal year. Upon receipt of that certification, the director of the department of technology, management, and budget shall compute the difference, if any, between actual state contributions received during the preceding state fiscal year and the product of the contribution rates determined in subsections (2) and (3) times the aggregate compensations paid to active members or qualified participants, as appropriate, during the preceding state fiscal year. Except as otherwise provided in subsection (5), the difference, if any, shall be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year. This subsection does not apply for those fiscal years in which a deposit occurs pursuant to subsection (6).

(5) For differences occurring in fiscal years beginning on or after October 1, 1991, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual contribution rate described in subsection (4), if any, may be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year and a minimum of 25% of the remaining difference shall be submitted in the executive budget to the legislature for appropriation in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest shall be included for each year that a portion of the remaining difference is carried forward. The interest rate shall equal the

actuarially assumed rate of investment return for the state fiscal year in which payment is made. This subsection does not apply for those fiscal years in which a deposit occurs pursuant to subsection (6).

(6) For each fiscal year that begins on or after October 1, 2001, if the actuarial valuation prepared pursuant to this section for each fiscal year demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions exceeds the actuarial present value of benefits, the annual level percent of payroll contribution rate as determined pursuant to subsections (1), (2), and (3) may be deposited into the health advance funding subaccount created under section 11(9).

(7) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1686, the benefits that are required to be paid from that fund shall be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that shall be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.38 ;-- Am. 1953, Act 196, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955 ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974 ;-- Am. 1979, Act 73, Imd. Eff. July 31, 1979 ;-- Am. 1980, Act 483, Imd. Eff. Jan. 20, 1981 ;-- Am. 1982, Act 316, Imd. Eff. Oct. 18, 1982 ;-- Am. 1984, Act 130, Imd. Eff. June 1, 1984 ;-- Am. 1987, Act 57, Imd. Eff. June 23, 1987 ;-- Am. 1987, Act 241, Imd. Eff. Dec. 28, 1987 ;-- Am. 1991, Act 62, Imd. Eff. June 27, 1991 ;-- Am. 1993, Act 15, Imd. Eff. Apr. 14, 1993 ;-- Am. 1993, Act 180, Imd. Eff. Sept. 29, 1993 ;-- Am. 1994, Act 273, Imd. Eff. July 11, 1994 ;-- Am. 1996, Act 279, Imd. Eff. June 17, 1996 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2007, Act 16, Imd. Eff. June 6, 2007 ;-- Am. 2010, Act 185, Imd. Eff. Sept. 30, 2010 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.39 Repealed. 1982, Act 316, Imd. Eff. Oct. 18, 1982.

**Compiler's Notes:** The repealed section pertained to payment of appropriation into employer's accumulation fund.

### 38.39a Reserves for retirement allowances; legislative determination of funds from which appropriations made.

Sec. 39a.

In the making of appropriations required under the provisions of sections 38 and 39, the appropriations by the legislature meeting employer's contributions covering employees, to the extent of compensation, now or hereafter paid from the general fund, and any other special fund, shall be made from the fund or funds in such amounts as the legislature determines.

**History:** Add. 1944, 1st Ex. Sess., Act 3, Imd. Eff. Feb. 16, 1944 ;-- CL 1948, 38.39a ;-- Am. 1974, Act 216, Imd. Eff. July 19, 1974

### 38.40 Allowances, benefits, and other rights; exemption from taxation; subject to tax beginning January 1, 2012; subject to public employee retirement benefit protection act.

Sec. 40.

(1) Except as otherwise provided in this section, the right of a person to a pension, an annuity, a retirement

allowance, and any optional benefit and any other right accrued or accruing to any person under the provisions of this act, the various funds created by this act, and all money and investments and income of the funds are exempt from any state, county, municipal, or other local tax.

(2) Beginning January 1, 2012, the right of a person to a pension, an annuity, a retirement allowance, and any optional benefit, and any other right accrued or accruing to any person under the provisions of this act, is subject to state tax upon distribution to the person from the various funds created by this act.

(3) The right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this act, the various funds created by this act, and all money and investments and income of the funds is subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.40 ;-- Am. 1985, Act 35, Imd. Eff. June 13, 1985 ;-- Am. 1991, Act 48, Imd. Eff. June 27, 1991 ;-- Am. 2002, Act 99, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 41, Imd. Eff. May 25, 2011

### 38.41 Correction of errors in payment of retirement allowances.

Sec. 41.

Should any change or error in the records result in any member, retirant or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the retirement board shall correct such error and, as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member, retirant or beneficiary was correctly entitled shall be paid.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.41 ;-- Am. 1955, Act 237, Imd. Eff. June 21, 1955

### 38.42 Retirement system records; falsification, penalty.

Sec. 42.

Penalty for false statements. Any person who shall knowingly make any false statements, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, shall be guilty of a misdemeanor and shall upon conviction thereof be fined not less than $10.00 nor more than $100.00.

**History:** 1943, Act 240, Eff. July 30, 1943 ;-- CL 1948, 38.42

### 38.43 Repealed. 1997, Act 148, Eff. Jan. 30, 1998.

**Compiler's Notes:** The repealed section pertained to contributions made to dissolved authority and transfer to retirement plan of successor agency.

### 38.44 Rights, privileges, and benefits of vested employee.

Sec. 44.

(1) An employee of the state accident fund who was vested in the state retirement system on or before the effective date of the transfer authorized by section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, is entitled to all of the rights, privileges, and benefits provided by this act accrued as of the effective date of the transfer.

(2) An employee of the Michigan biologic products institute who was vested in the state retirement system on or before the effective date of the conveyance authorized by the Michigan biologic products institute transfer act is entitled to all of the rights, privileges, and benefits provided by this act accrued as of the effective date of the conveyance.

(3) An employee of the liquor control commission created by section 5 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.5 of the Michigan Compiled Laws, who was vested in the state retirement system on or before the date the privatization of the distribution of spirits within this state is effectuated pursuant to the resolution and order adopted by the liquor control commission on February 7, 1996, a plan adopted pursuant to statute or court order, or a plan adopted pursuant to both statute and order of the liquor control commission is entitled to all of the rights, privileges, and benefits provided by this act accrued as of the date the privatization is effectuated.

**History:** Add. 1993, Act 195, Eff. Dec. 28, 1994 ;-- Am. 1996, Act 521, Imd. Eff. Jan. 13, 1997
**Compiler's Notes:** Section 2 of Act 195 of 1993 provides as follows:"Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

### 38.44a Member employed by state judicial council.

Sec. 44a.

(1) An individual who was a member on September 30, 1996 by virtue of his or her employment by the state judicial council shall continue to be a member on and after October 1, 1996 if all of the following requirements are met:

(a) The individual is employed by the Wayne county judicial council, if created, by the Detroit judicial council, if created, or by the city of Detroit or Wayne county performing judicial duties in the circuit court in the third judicial circuit, in the recorder's court of the city of Detroit, or in the district court in the thirty-sixth district.

(b) The individual's employer pays to the retirement system an amount based upon the contribution rates determined under section 38, in the manner prescribed by the retirement system.

(2) By January 20, April 20, July 20, and October 20 of each year, the employer of an individual described in subsection (1) shall file with the retirement system a quarterly affidavit for the preceding 3 months. The affidavit shall certify the aggregate compensation that is reportable to the retirement system under this act, sources of contributions, and contributions required by law. Not later than October 20 of each year, the employer of an individual described in subsection (1) shall file a report with the retirement system that includes all of the following information for the preceding 12 months:

(a) A list of all individuals described in subsection (1) employed by that employer.

(b) The salary paid to each individual listed under subdivision (a).

(c) The amount of service performed by an individual listed under subdivision (a).

(d) Any other information the retirement system requires for the administration of this section.

(3) If an employer fails to submit a report or contributions, or both, according to the schedule established by the retirement system, the employer shall pay a late fee. If the employer remits contributions late, the late fee shall include interest for each day the remittance of contributions is late. The retirement system periodically may establish a late fee, which fee shall not be less than $25.00, and interest charges, which charges shall not be less than 6% per annum.

(4) The retirement system shall grant service credit for the time an individual meets the requirements established in subsection (1). An individual who continues to be a member under this section is entitled to all of the rights, privileges, and benefits provided by this act.

**History:** Add. 1996, Act 389, Imd. Eff. Sept. 30, 1996

**38.45 Definitions.**

Sec. 45.

As used in this section and sections 46 and 47:

(a) "Covered position" means any of the following:

(i) On or after January 1, 1989, a position in the classified civil service with a classification of any of the following:

(A) Corrections officer.

(B) Resident unit officer.

(C) Corrections medical aide.

(D) Corrections shift supervisor.

(E) Corrections security inspector.

(F) Corrections security representative.

(G) Deputy prison warden.

(H) Departmental administrator-prison warden.

(ii) On or after January 1, 1989, a position that is assigned to a work station inside the security perimeter of a state correctional facility designated as "medium", "close", or "maximum".

(iii) On or after January 1, 1989, a position within a state correctional facility that requires the employee to be in direct contact with prisoners for more than 50% of the employee's work time performing supervisory or disciplinary duties including 1 or more of the following:

(A) Supervising prisoners in the performance of tasks.

(B) Supervising prisoners for the purpose of enforcing the facility's rules.

(C) Direct participation in the disciplinary process.

(iv) On or after January 1, 1989, a position with the center for forensic psychiatry that is classified by civil service as forensics security aide IIB, forensics security aide IIIB, forensics security supervisor IVB, forensics security supervisor VB, forensics security supervisor VIB, or forensics supervisor VII.

(v) A position that was a covered position under this section before January 1, 1989, that is excluded by subparagraphs (i) to (iv), if and only as long as the person in the position on January 1, 1989, continues in the position after January 1, 1989.

(b) "Supplemental member" means a member who is employed in a covered position.

(c) "Covered service" means credited service acquired in a covered position.

(d) "Supplemental final average compensation" means 1/3 of the compensation paid a supplemental member during the period of 3 consecutive years of the member's covered service producing the highest average and contained within the member's last 10 years of credited service immediately preceding the date the member's employment in a covered position last terminates.

(e) "State correctional facility" means a facility under the jurisdiction of the department of corrections that has a designation of "maximum", "close", "medium", "minimum", "prison camp", or "correction center".

**History:** Add. 1976, Act 302, Eff. Mar. 31, 1977 ;-- Am. 1978, Act 622, Imd. Eff. Jan. 6, 1979 ;-- Am. 1988, Act 351, Eff. Jan. 1, 1989 ;-- Am. 2002, Act 743, Imd. Eff. Dec. 30, 2002 ;-- Am. 2018, Act 556, Imd. Eff. Dec. 28, 2018

**38.46 Retirement or separation from employment of supplemental member with supplemental early retirement allowance; conditions; determination of eligibility.**

Sec. 46.

(1) A supplemental member may retire with a supplemental early retirement allowance as provided for in section 47 if the supplemental member meets all of the following conditions:

(a) He or she is age 51 years or older but less than age 62 years.

(b) He or she has 25 or more years of covered service.

(c) His or her last 3 years of credited service are covered service.

(d) He or she files a written request for retirement with the retirement board stating the date that he or she wishes to be retired.

(2) A supplemental member may be separated from employment in a covered position the first day of the calendar month following the month in which he or she attains age 56 years. A supplemental member separated

under this subsection may retire with a supplemental early retirement allowance provided in section 47 if he or she satisfies each of the following conditions:

(a) He or she has not attained age 62 years.

(b) He or she has 10 or more years of covered service.

(c) His or her last 3 years of credited service are covered service.

(d) He or she files a written request for retirement with the retirement board stating the date that he or she wishes to be retired.

(3) The state personnel director shall determine all questions on eligibility for supplemental early retirement benefits within the meaning of sections 45 to 47.

**History:** Add. 1976, Act 302, Eff. Mar. 31, 1977 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2002, Act 743, Imd. Eff. Dec. 30, 2002

### 38.47 Temporary straight life supplemental early retirement allowance; payment; computation; electing optional form of payment.

Sec. 47.

(1) Upon retirement as provided in section 46, a supplemental member shall be paid a temporary straight life supplemental early retirement allowance terminating upon the supplemental member reaching age 62 years or his or her death, whichever occurs first. Prior to the effective date of retirement, the supplemental member may choose to be paid his or her retirement allowance under an optional form of payment provided in section 31(1)(a). For the purposes of this election, the provisions of section 31(1)(a) are modified to reflect the temporary nature of a supplemental early retirement allowance.

(2) Subject to section 20j, the amount of the supplemental member's temporary straight life supplemental early retirement allowance is equal to the difference between (i) 2.0% of his or her supplemental final average compensation multiplied by his or her covered service plus 1.5% of the supplemental member's final average compensation multiplied by the excess, if any, of his or her credited service over his or her covered service; and (ii) the amount of retirement allowance paid under section 20.

**History:** Add. 1976, Act 302, Eff. Mar. 31, 1977 ;-- Am. 2002, Act 743, Imd. Eff. Dec. 30, 2002 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Effective Date:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.47a Report.

Sec. 47a.

The retirement board shall report to the house and senate appropriations committees not later than June 30, 2003 on the cost of transferring persons to noncovered positions if they were in covered positions with corrections centers before their positions were terminated due to the closures of the corrections centers between August 1, 1999 and August 1, 2000, if the persons continue in noncovered positions until retiring as supplemental members under sections 46 and 47 or transferred to covered positions but whose last 3 years of credited service are a combination of covered and uncovered service due to the termination of the covered positions by the closure of a corrections center.

**History:** Add. 2002, Act 743, Imd. Eff. Dec. 30, 2002

**38.48 Conservation officers.**

Sec. 48.

(1) A member who is a conservation officer may retire under this section if all of the following requirements are met:

(a) The member is a conservation officer on April 1, 1991.

(b) The member has 25 or more years of credited service, of which 20 years of credited service are as a conservation officer and of which the last 2 years of credited service are as a conservation officer.

(2) A member who is a conservation officer may retire under this section if the member has 25 or more years of credited service, of which 23 years of credited service are as a conservation officer and of which the last 2 years of credited service are as a conservation officer.

(3) A member may retire under subsection (1) or (2) upon written application to the retirement board stating a date upon which he or she desires to retire. Subject to section 20j, beginning on the retirement allowance effective date, he or she shall receive a retirement allowance equal to 60% of the member's annual compensation for the member's most highly compensated 24 consecutive months of service as a conservation officer. The formula for calculating a member's retirement allowance under this subsection shall never exceed the formula for calculating a retirement allowance under section 24 of the state police retirement act of 1986, 1986 PA 182, MCL 38.1624.

(4) A member who is a conservation officer may retire under this section if all of the following requirements are met:

(a) The member is a conservation officer on April 1, 1991.

(b) The member is 50 years of age or older.

(c) The member has 10 years of credited service as a conservation officer and the last 2 years of credited service are as a conservation officer.

(5) A member may retire under subsection (4) upon written application to the retirement board, on or after April 1, 1991, but not later than April 1, 1992, stating a date on which he or she desires to retire. The retirement allowance effective date shall be on or after May 1, 1991 but not later than July 1, 1992. Beginning on the retirement allowance effective date, he or she shall receive a retirement allowance equal to 2% of the member's annual compensation for the member's most highly compensated 24 consecutive months of service as a conservation officer times the number of years, including any fraction of a year, of service credited to the member under this act. However, a retirement allowance payable under this subsection shall not exceed 60% of the member's annual compensation for the member's most highly compensated 24 consecutive months of service as a conservation officer.

(6) Before the effective date of the retirement allowance, a member who is a conservation officer and who retires under this section shall elect to receive his or her retirement allowance under a form of payment as provided in section 31(1).

(7) Pursuant to rules promulgated by the retirement board, a member who retires under this section before becoming 65 years old may elect to have his or her regular retirement allowance equated on an actuarial basis to provide an increased retirement allowance payable to age 65 and a reduced retirement allowance payable after becoming 65 years old. The retirant's increased retirement allowance payable to age 65 shall approximately equal the sum of his or her reduced retirement allowance payable after age 65 and his or her estimated social security primary insurance amount.

(8) If a member who retires under this section dies before receiving payment of his or her retirement allowance in an aggregate amount equal to the accumulated contributions standing to the retirant's account in the employees' savings fund at the time of his or her retirement, the difference between his or her accumulated contributions and the amount of the retirement allowance received by him or her shall be paid to the person or persons that the retirant has nominated by written designation duly executed and filed with the retirement board, or, if there is no such designated person or persons surviving, then to the retirant's legal representative or estate.

(9) The director of the department of natural resources, or his or her designee, shall certify to the retirement board that a member who applies to retire under this section is a conservation officer.

(10) This section does not prohibit a member who is a conservation officer and who does not meet the requirements of this section from qualifying for a retirement allowance under any other provision of this act.

**History:** Add. 1990, Act 110, Eff. Apr. 1, 1991 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

**38.49 Administration of retirement system as qualified pension plan under internal revenue code; requirements and benefit limitations; qualified military service.**

Sec. 49.

(1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, which 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, 26 USC 401, and that the trust be an organization exempt from taxation under section 501 of the internal revenue code, 26 USC 501. 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 must 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 applies 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 must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance 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 on retirement, under Internal Revenue Service regulations and approved Internal Revenue Service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions must 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, apply to this act and must 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 the retirement system.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance 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 after December 31, 1992. Beginning October 1, 2010, a nonspouse beneficiary may elect to have any portion of an amount payable under this act that is an eligible rollover distribution treated as a direct rollover that will be paid in a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity described in section 408(a) or (b) of the internal revenue code, 26 USC 408, that is established for the purpose of receiving a distribution on behalf of the beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity under section 402(c)(11) of the internal revenue code, 26 USC 402.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 31(1) and 20(2), the actuarially assumed interest rate must be determined by the director of the department of technology, management, and budget and the retirement board in consultation with the actuary using the mortality tables adopted by the department of technology, management, and budget and the retirement board.

(9) Notwithstanding any other provision of this act to the contrary, the compensation of a member of the retirement system must 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 an individual who first becomes a member of the retirement system after September 30, 1996.

(10) Notwithstanding any other provision of this act to the contrary, contributions, benefits, and service credit

with respect to qualified military service must 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 after December 11, 1994. Beginning on 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 death benefits payable under this act, the member is treated as having resumed and then terminated employment because of death.

**History:** Add. 1995, Act 176, Imd. Eff. Oct. 17, 1995 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004 ;-- Am. 2008, Act 353, Imd. Eff. Dec. 23, 2008 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011 ;-- Am. 2018, Act 336, Imd. Eff. July 2, 2018

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

**38.50 Election to terminate participation in Tier 1 and to participate in Tier 2; irrevocability; termination of employment; reemployment of deferred or former nonvested member; method of election; signature of spouse; waiver; election subject to eligible domestic relations order act; effect of disqualification notice from United States internal revenue service; exception.**

Sec. 50.

(1) Except as otherwise provided in subsection (2), the retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on April 30, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight May 31, 1998.

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

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under this act effective 12 midnight May 31, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 68.

(2) This subsection applies to an individual who was a vested member of Tier 1 on March 30, 1997 and who terminates the employment upon which that membership is based on or after March 31, 1997 but on or before May 31, 1998. Before the termination of his or her employment, an individual described in this subsection may elect in writing to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a member during the period beginning on March 31, 1997 and ending on May 31, 1998. A member described in this subsection who does not make a written election or who does not file the election before the termination of his or her employment continues to be a member or defined member of Tier 1. A member who makes and files a written election under this subsection to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 and become a qualified participant in Tier 2 effective 12 midnight on the day immediately preceding the date of the termination of employment.

(b) Become a former qualified participant in Tier 2 effective 12:01 a.m. on the day immediately following the date described in subdivision (a).

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the date described in subdivision (a). This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 68.

(3) If an individual who was a deferred member on March 30, 1997 or an individual who was a former nonvested member on March 30, 1997 is reemployed before January 1, 2012 and by virtue of that employment is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a deferred member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a deferred member or a former nonvested member during the period beginning on the

date of the individual's reemployment and ending upon the expiration of 60 days after the date of that reemployment but no later than February 29, 2012. A deferred member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A deferred member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A deferred member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

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

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

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election. This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 68.

(4) After consultation with the retirement system's actuary and the retirement board, the department of technology, management, and budget shall determine the method by which a member, deferred member, or former nonvested member shall make a written election under this section. If the member, deferred member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(5) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(6) If an individual who was a deferred member of the public school employees retirement system on March 30, 1997 is first employed and entered upon the payroll of his or her employer on or after March 31, 1997 and before January 1, 2012, the retirement system shall provide an opportunity for that individual to elect in writing to become a member of Tier 1 or to become a qualified participant of Tier 2. The retirement system and the individual shall follow the provisions and procedures provided in this section and by the state treasurer as if the individual were a deferred member of this retirement system on March 30, 1997.

(7) If the department of technology, management, and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(8) This section does not apply to a deferred member or former nonvested member under subsection (3) or a deferred member of the public school employees retirement system under subsection (6) on or after January 1, 2012.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.50a Election to continue receiving credit for future service and compensation; designation; failure to make election; rescission; reemployment of former nonvested member; "attainment date" defined.

Sec. 50a.

(1) The retirement system shall permit each member who is a member on December 31, 2011 to make an election with the retirement system to continue to receive credit for any future service and compensation after March 31, 2012, for purposes of a calculation of a retirement allowance under this act. A member who makes the election under this section shall make the contributions prescribed in section 35a.

(2) As part of the election under subsection (1), the retirement system shall permit the member to make a designation that the contributions prescribed in section 35a shall be paid only until the member's attainment date. A member who makes the election under subsection (1) and who makes the designation under this subsection shall make the contributions prescribed in section 35a only until the member's attainment date. A member who makes the

election under subsection (1) and who does not make the designation or rescinds the designation under this subsection shall make the contributions prescribed in section 35a until termination of employment.

(3) The retirement system shall determine a method of accepting member elections and designations under this section. The retirement system shall accept elections and designations under this section from members during an election period that begins on January 3, 2012 and ends at 5 p.m. eastern standard time on March 2, 2012. A member may rescind an election or designation on or before the close of the election period. An election or designation made by a member and not rescinded on or before the close of the election period shall not be rescinded.

(4) A member who does not make the election under this section or who rescinds an election on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 20j, beginning 12 midnight on March 31, 2012.

(b) He or she becomes a qualified participant in Tier 2 beginning 12:01 a.m. on April 1, 2012.

(c) He or she shall receive a retirement allowance calculated under section 20 that is based only on credited service and compensation allowed under section 20j(1) and (2). This subdivision does not affect a person's right to health insurance coverage provided under section 20d or credit for service provided under section 20j(3).

(5) A member who makes the election under this section and the designation under subsection (2) and who does not rescind the election and designation on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 20j, beginning 12 midnight on the member's attainment date.

(b) He or she becomes a qualified participant in Tier 2 beginning 12:01 a.m. on the day after the attainment date if he or she remains employed by this state.

(c) He or she shall receive a retirement allowance calculated under section 20 that is based only on credited service and compensation allowed under section 20j(5) and (6). This subdivision does not affect a person's right to health insurance coverage provided under section 20d or credit for service provided under section 20j(7).

(6) Except as otherwise provided in this subsection or subsection (7), a deferred member or former nonvested member who is reemployed on or after January 1, 2012 shall be treated in the same manner as a member under section 20j who did not make the election under this section and shall become a qualified participant in Tier 2. However, a deferred member or former nonvested member who, while a member, made the election under this section shall have the credited service accrued and compensation received during the time he or she made the contributions under section 35a included in the calculation of a retirement allowance under this act.

(7) A former nonvested member who is reemployed on or after January 1, 2014 is not eligible for membership in Tier 1, shall become a qualified participant in Tier 2, and shall be treated as being first employed by this state as of his or her date of reemployment.

(8) A deferred member of the public school employees retirement system who is first employed and entered upon the payroll of his or her employer on or after January 1, 2012 shall become a qualified participant in Tier 2 and shall not be treated as a member for any purpose.

(9) As used in this section, "attainment date" means that term as defined in section 20j.

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Constitutionality:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.51 Transfer of lump sum amount.

Sec. 51.

(1) For a member who elects to terminate membership in Tier 1 under section 50(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the qualified participant's account in Tier 2 on or before September 30, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight May 31, 1998.

(b) For a member who is vested under section 20(4) or (5) as of 12 midnight on May 31, 1998, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in

subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final average compensation as of 12 midnight on May 31, 1998. The actuarial present value shall be computed as of 12 midnight May 31, 1998 and shall be based on the following:

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

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

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight May 31, 1998. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight May 31, 1998:

(A) Age 60.

(B) Age 55, if the member's estimated credited service equals or exceeds 30 years.

(C) The age of the member if section 19(5), 46, or 48 applies.

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

(2) For each member who elects to terminate membership in the retirement system under section 50(1), the retirement system shall recompute the amount transferred under subsection (1) not later than November 30, 1998 based upon the member's actual credited service and actual final average compensation as of 12 midnight May 31, 1998. If the recomputed amount differs from the amount transferred under subsection (1) by $10.00 or more, not later than December 15, 1998, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight May 31, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a member who elects to terminate membership in this retirement system under section 50(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the former qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the day immediately preceding the date of the termination of employment.

(b) The excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final average compensation as of 12 midnight on the day immediately preceding the date of the termination of employment. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

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

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

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the day immediately preceding the date of the termination of employment. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the day immediately preceding the date of the termination of employment:

(A) Age 60.

(B) Age 55, if the member's estimated credited service equals or exceeds 30 years.

(C) The age of the member if section 19(5), 46, or 48 applies.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the day immediately following the date described in subdivision (a) to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(4) For each member who elects to terminate membership in Tier 1 under section 50(2), the retirement system shall recompute the amount transferred under subsection (3) not later than the expiration of 90 days after the transfer occurs under subsection (3) based upon the member's actual credited service and actual final average compensation as of 12 midnight on the day immediately preceding the date of the termination of employment. If the recomputed amount differs from the amount transferred under subsection (3) by $10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the former qualified

participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the day immediately preceding the date of the termination of employment to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the former qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

(5) For a deferred member who elects to terminate membership in this retirement system under section 50(3), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The deferred member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) The excess, if any, of the actuarial present value of the deferred member's accumulated benefit obligation, over the amount specified in subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the deferred member's accumulated benefit obligation is based upon the deferred member's estimated credited service and estimated final average compensation as of 12 midnight on the last day of the payroll period that includes the date of the election. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

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

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

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

(A) Age 60.

(B) Age 55, if the deferred member's estimated credited service equals or exceeds 30 years.

(C) The age of the deferred member if section 19(5), 46, or 48 applies.

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

(6) For each deferred member who elects to terminate membership in Tier 1 under section 50(3), the retirement system shall recompute the amount transferred under subsection (5) not later than the expiration of 90 days after the transfer occurs under subsection (5) based upon the deferred member's actual credited service and actual final average compensation as of 12 midnight on the last day of the payroll period that includes the date of the election. If the recomputed amount differs from the amount transferred under subsection (5) by $10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (6), based upon 8% effective annual interest, compounded annually.

(7) For the purposes of subsections (1) to (6), the calculation of estimated and actual present value of the member's or deferred member's accumulated benefit obligation shall be based upon methods adopted by the department of management and budget and the retirement system's actuary in consultation with the retirement board. The retirement system shall utilize the same actuarial valuation report used to calculate the amount transferred under subsection (1), (3), or (5) when making the recomputation required under subsection (2), (4), or (6). Estimated and actual final average compensation shall be determined as provided in section 1e as of 12 midnight on the date the member or deferred member ceases to be a member of Tier 1 under section 50.

(8) For a former nonvested member who elects to terminate membership in Tier 1 under section 50(3) and who has accumulated contributions standing to his or her credit in the employees' savings fund, the retirement system shall direct the state treasurer to transfer a lump sum amount from the employees' savings fund created under section 11 to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The former nonvested member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

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

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

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.52 Calculation of accrued cost savings for each fiscal year.

Sec. 52.

After consulting the retirement system's actuary, the department of management and budget shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of 1996 PA 487 over the costs that would have been incurred by this state to fund this retirement system had 1996 PA 487 not been implemented. For each fiscal year in which a deposit under section 38(6) does not occur, the department may deposit all or part of the cost savings calculated pursuant to this section into the health advance funding subaccount created under section 11(9) by reducing the normal cost and unfunded actuarial accrued liability contribution rates as calculated pursuant to section 38, and increasing the contribution rate for benefits provided under section 20d by the same amount. However, the normal cost and unfunded accrued actuarial liability rates shall not be reduced to an amount less than zero.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 93, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.53 Meanings of words and phrases; definitions; A to C.

Sec. 53.

(1) For the purposes of this section and sections 54 to 69, the words and phrases defined in this section and sections 54 to 69 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(3) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer equal to the sum of the following:

(a) A participant's W-2 earnings for services performed for the employer excluding part B annual leave hours paid at separation.

(b) Any amount contributed or deferred at the election of the participant which is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

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

(d) The value of hours not worked during which a participant is in a voluntary or involuntary pay reduction plan A or on 1-day layoff or designated temporary layoff calculated at the participant's then current hourly rate or rates of pay.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.54 Definitions; E to H.

Sec. 54.

(1) "Employer" means this state or, if a qualified participant is not employed by this state but is a participant in Tier 2 by virtue of his or her employment, the employer that pays his or her compensation.

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

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

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.55 Definitions; P to Y.

Sec. 55.

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

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

(a) Is first employed and entered upon the payroll of his or her employer on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) Elects to terminate membership in Tier 1 and elects to participate in Tier 2 in the manner prescribed in section 50.

(c) Is an adjutant general or an assistant adjutant general under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, and who is first employed as an adjutant general or assistant adjutant general on or after January 1, 2011.

(d) Was a member who did not make the election under section 50a.

(e) Was a member who made the election under section 50a(1) and the designation under section 50a(2) and who has attained 30 years of credited service or who has terminated employment and has been reemployed by this state.

(f) Was a member as described in section 50a(6), (7), or (8).

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

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

(5) "Tax-deferred account" means an account or accounts of existing deferred compensation plans or plans established by the retirement system, for which the retirement system has the authority to determine the membership, eligibility, terms, conditions, and other administrative and operational features. Tax-deferred account does not include a health reimbursement account for purposes other than complying with the contribution limits described in section 68b(12).

(6) Except as otherwise provided in this subsection, "year of service" means each period during which a qualified participant is employed by the employer and is credited with 2,080 hours of service. The Tier 2 plan administrator and the plan document may provide for a lesser number of annual hours and a maximum number of hours per pay period for any classification of employees, provided that no participant shall receive credit for more than 1 year of service for any 12-month period of employment. Beginning January 1, 2003, full service credit shall also be given to a participant for furlough hours, for required 1-day layoffs, for required and designated temporary layoffs, for a year in which a participant temporarily leaves employment to enter active military duty and then dies during that

active military duty, and for participation in the banked leave time program. In the event a terminated participant is reemployed, such individual shall retain credit for all full and partial years of service completed prior to such reemployment, for purposes of determining his or her vesting percentage in any employer contributions made pursuant to section 63(2) and (3) after his or her reemployment.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004 ;-- Am. 2010, Act 256, Imd. Eff. Dec. 14, 2010 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.56 State treasurer; powers and duties.

Sec. 56.

(1) The state treasurer shall administer Tier 2 and shall invest the assets of Tier 2. The state treasurer is the fiduciary and trustee of Tier 2. The state treasurer may appoint an advisory board to assist the state treasurer in carrying out his or her duties as fiduciary and trustee.

(2) The state treasurer shall determine the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(3) The state treasurer has the exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper administration of and investment of assets of Tier 2, including but not limited to managerial, professional, legal, clerical, technical, and administrative personnel or services.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”

### 38.57 Hearing.

Sec. 57.

(1) A qualified participant, former qualified participant, health benefit dependent, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the state treasurer shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An individual may be represented by counsel or other duly authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of Act No. 306 of the Public Acts of 1969, being sections 24.224 to 24.264 and 24.291 to 24.292 of the Michigan Compiled Laws, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”

### 38.58 Investment of employer and employee contributions and earnings; direction by participant.

Sec. 58.

Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the state treasurer. The limitations on the percentage of total assets for investments provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, do not apply to Tier 2.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.59 Payment of administrative expenses.

Sec. 59.

The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the state treasurer.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.60 Other public sector retirement benefits plan; participation.

Sec. 60.

A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the state treasurer, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.61 Election by elected or appointed official.

Sec. 61.

An elected or appointed official who is first elected or appointed on or after March 31, 1997 may irrevocably elect not to become a qualified participant of Tier 2 or may irrevocably elect to discontinue participation in Tier 2 by filing written notice of the election with the state treasurer. Upon receipt of the election, his or her employer shall not contribute any percentage of compensation under section 63 for the official who makes either election.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.62 Transfer of amount; crediting and charging participant account.

Sec. 62.

(1) The state treasurer shall promptly credit the Tier 2 account of a qualified participant or former qualified participant who makes an election under section 50 to terminate membership in Tier 1 with any amount transferred from Tier 1 pursuant to section 51.

(2) Not later than 30 days after receipt of a recomputed amount under section 51(2), (4), or (6), the state treasurer shall charge the participant's Tier 2 account for any amount of excess transfers under section 51(1), (3), or (5) and transfer that amount to the appropriate fund in Tier 1. The state treasurer may determine which investment choice or choices within a participant's Tier 2 account will be used for this purpose.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.63 Contributions by employer and participant.

Sec. 63.

(1) This section is subject to the vesting requirements of section 64.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's compensation.

(3) A qualified participant may periodically elect to contribute up to 3% of his or her compensation to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to his or her Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.63a Tier 2 and tax-deferred accounts; terms and conditions.

Sec. 63a.

Tier 2 and tax-deferred accounts are subject to the following terms and conditions:

(a) On or before April 1, 2012, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under section 63(3) or who is described in section 68b(2) elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature on or after April 1, 2012, as determined by the retirement system.

(b) In addition to elective employee contributions to Tier 2 or a tax-deferred account, the state may use elective employee contributions to the state 457 deferred compensation plan as a basis for making employer matching contributions to Tier 2 or a tax-deferred account.

(c) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(d) Elective employee contributions shall not be used as the basis for more than an equivalent amount of employer matching contributions.

(e) The retirement system shall design and implement a method to determine the proper allocation of employer

matching contributions based on elective employee contributions as provided in this section.

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.64 Tier 2; vesting requirements.

Sec. 64.

(1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2 and employer contributions under the banked leave time program. Except as otherwise provided in this section, a qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is eligible for the health insurance coverage provided in section 68 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 10 years of service as a qualified participant, was not a member, deferred member, or former nonvested member of Tier 1, was first employed and entered upon the payroll of his or her employer before January 1, 2012, and did not make an election to opt out of health insurance coverage under section 68b.

(b) The qualified participant was a member, deferred member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 50, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 20d.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 33, Imd. Eff. Mar. 22, 2004 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.65 Crediting years of service accrued.

Sec. 65.

A qualified participant who was a member, deferred member, or former nonvested member of Tier 1 shall be credited with the years of service accrued under Tier 1 on the effective date of participation in Tier 2 for the purpose of meeting the vesting requirements for benefits under section 64.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.66 Refund beneficiary.

Sec. 66.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the state treasurer. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the state treasurer may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.67 Distributions of accumulated balance.

Sec. 67.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the state treasurer, the state treasurer, in a lump sum distribution, shall distribute the accumulated balance to the legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the state treasurer.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.67a Duty disability retirement allowance; supplemental benefit; health insurance coverage; exception.

Sec. 67a.

(1) Except as otherwise provided in this section or section 33, a qualified participant who becomes totally incapacitated for duty because of a personal injury or disease shall be retired if all of the following apply:

(a) Within 1 year after the qualified participant becomes totally incapacitated or at a later date if the later date is approved by the retirement board, the qualified participant, the qualified participant's personal representative or guardian, his or her department head, or the state personnel director files an application on behalf of the member with the retirement board.

(b) The retirement board finds that the qualified participant's personal injury or disease is the natural and proximate result of the qualified participant's performance of duty.

(c) A medical advisor conducts a medical examination of the qualified participant and certifies in writing that the qualified participant is mentally or physically totally incapacitated for further performance of duty, that the total

incapacitation is probably permanent, and that the qualified participant should be retired.

(d) The retirement board concurs in the recommendation of the medical advisor.

(2) If the retirement board grants the application of the qualified participant under subsection (1), the qualified participant shall be granted a supplemental benefit equivalent to the amount provided in section 23 as if the former qualified participant had retired under section 21, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(3) If a qualified participant dies as a result of a personal injury or disease arising out of and in the course of his or her employment with this state, or if a former qualified participant who retired under subsection (1) who dies before becoming age 60 and within 3 years after the former qualified participant's disability retirement from the same causes from which he or she separated, and such death or illness or injuries resulting in death are found by the retirement board to have been the sole and exclusive result of employment with this state, a supplemental benefit shall be granted equivalent to the amount provided for in section 27 had the former qualified participant been considered retired under section 27, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance upon becoming a former qualified participant pursuant to section 67.

(4) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a duty disability retirement allowance pursuant to subsection (1), (2), or (3), is eligible for health insurance coverage under section 20d in all respects and under the same terms as would be a retirant and his or her beneficiaries under Tier 1.

(5) Except as otherwise provided in this section or section 33, a qualified participant who becomes totally incapacitated for duty because of a personal injury or disease that is not the natural and proximate result of the qualified participant's performance of duty may be retired if all of the following apply:

(a) Within 1 year after the qualified participant becomes totally incapacitated or at a later date if the later date is approved by the retirement board, the qualified participant, the qualified participant's personal representative or guardian, the qualified participant's department head, or the state personnel director files an application on behalf of the qualified participant with the retirement board.

(b) A medical advisor conducts a medical examination of the qualified participant and certifies in writing that the qualified participant is mentally or physically totally incapacitated for further performance of duty, that the incapacitation is likely to be permanent, and that the qualified participant should be retired.

(c) The qualified participant has been a state employee for at least 10 years.

(6) If the retirement board grants the application of the qualified participant under subsection (5), the qualified participant shall be granted a supplemental benefit equivalent to the amount provided for in section 25 as if the qualified participant had retired under section 24. The supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(7) Except as otherwise provided in this section, if a qualified participant who has been a state employee for the number of years necessary to vest under Tier 1 dies as a result of causes occurring not in the performance of duty to this state, a supplemental benefit shall be granted equivalent to the amount provided for in section 25 had the former qualified participant been considered retired under section 24, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(8) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a disability retirement allowance pursuant to subsection (5), (6), or (7) is eligible for health insurance coverage under section 20d in all respects and under the same terms as would be a retirant and his or her beneficiaries under Tier 1.

(9) This section does not apply to a qualified participant or former qualified participant who was a member who meets the requirements of section 55(2)(d), (e), or (f).

(10) Subsections (4) and (8) do not apply to a qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2004, Act 109, Imd. Eff. May 20, 2004 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:“If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

**38.68 Health insurance coverage.**

Sec. 68.

(1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is eligible for health benefits under section 64(2).

(b) The former qualified participant meets or exceeds the benefit commencement age employed in the actuarial present value calculation under section 51 and the service requirements that would have applied to that former qualified participant under Tier 1 for receiving health insurance coverage under section 20d, if that former qualified participant was a member of Tier 1.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 20d. A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in the manner prescribed in this section.

(3) An individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 20d.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is eligible for those benefits under section 64(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. For a former qualified participant who commenced state employment before April 1, 2010 and for his or her health benefit dependents, the portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the product of 3% and the former qualified participant's years of service, up to 30 years, but shall not exceed the lesser of 90% of the payments for health insurance coverage or the portion of the health insurance coverage premiums payable by this state for a retirant, his or her beneficiary, and his or her dependents under section 20d. If the individual elects the health insurance coverage provided under section 20d, the state shall transfer its portion of the amount calculated under this subsection to the health insurance reserve fund created by section 11. For a former qualified participant who commenced state employment on or after April 1, 2010 and for his or her health benefit dependents, the portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the product of 3% and the former qualified participant's years of service, up to 30 years, but shall not exceed the lesser of the portion of the health insurance coverage premiums payable by this state for a retirant, his or her beneficiary, and his or her dependents under section 20d or the portion of the health insurance coverage premiums payable by this state for a member who occupies a position in the classified state civil service or has classified civil service status commencing state employment on or after April 1, 2010.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is eligible for those benefits under section 64(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 20d. If the individual elects the health insurance coverage provided under section 20d, the state shall transfer its portion of the amount calculated under this subsection to the health insurance reserve fund created by section 11.

(6) Beginning January 1, 2011, any former qualified participant or health benefit dependent who is eligible to elect health insurance coverage under this section and who previously elected coverage under a different plan than the plan authorized under section 20d may either elect coverage under this section or may at his or her own cost participate in coverage under a different plan than the plan authorized under section 20d.

(7) If the department of technology, management, and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(8) As used in this section, "health insurance coverage" means the hospitalization and medical insurance, dental coverage, vision coverage, and any other health care insurance provided in section 20d.

(9) Subsections (1) to (8) do not apply to a qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made the election

to opt out of health insurance coverage under section 68b.

(10) A former qualified participant may enroll in the same retiree health care plan offered by this state and available to former qualified participants who commenced state employment on or after April 1, 2010, if he or she meets all of the following requirements:

(a) The former qualified participant made the election to opt out of health insurance coverage under section 68b or was first employed and entered on the payroll of his or her employer on or after January 1, 2012.

(b) The former qualified participant meets or exceeds the benefit commencement age as set forth in section 51(3)(b)(iii).

(c) The former qualified participant enrolls immediately on termination.

(d) The former qualified participant has not previously disenrolled from the plan.

(e) The former qualified participant pays the total cost of the plan.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2010, Act 185, Imd. Eff. Sept. 30, 2010 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.68a Appropriation amount; purpose; work project; estimated completion date.

Sec. 68a.

In addition to the amount appropriated in part 1 of 2001 PA 83 for retirement services, there is appropriated for the fiscal year ending September 30, 2002, $2,100,000.00 in pension trust funds to the department of management and budget, retirement services, for administration of the changes created by House Bill No. 5732 of the 91st Legislature. The unexpended portion of this appropriation is considered a work project appropriation. The project will be accomplished by the use of department personnel and contracting with private consultants with an estimated completion date of September 30, 2003.

**History:** Add. 2002, Act 99, Imd. Eff. Mar. 27, 2002

### 38.68b Participant employed on or after January 1, 2012 or making election under subsection (5) or (6); health insurance coverage; contribution to tax-deferred account; opt-out; calculation of amount under subsection (7) and adjustment under subsection (8); implementation of subsections (5) to (11); method; report.

Sec. 68b.

(1) A qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6) shall not receive any health insurance coverage premium from this state under section 68. In lieu of any health insurance coverage premium that might have been paid by this state under section 68, a qualified participant's employer shall make a matching contribution up to 2% of the qualified participant's compensation to an appropriate tax-deferred account for each qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6). A matching contribution under this subsection shall not be used as the basis for a loan from an employee's Tier 2 or tax-deferred account.

(2) A qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6) may make a contribution up to 2% of the qualified participant's compensation to an appropriate tax-deferred account.

(3) Except as otherwise provided in this subsection, a qualified participant is vested in contributions made to his

or her tax-deferred account under subsections (1) and (2) according to the vesting provisions under section 64(1). A qualified participant who is eligible for health insurance coverage under section 67a(4) or (8) is not vested in any employer contributions under subsection (1) and forfeits the contributions and earnings on the contributions.

(4) The contributions described in this section shall begin with the first payday after the qualified participant is employed or on or after April 1, 2012 for a qualified participant who makes an election under subsection (5) or (6) and end upon his or her termination of employment.

(5) Except as otherwise provided in this subsection, beginning January 3, 2012 and ending at 5 p.m. eastern standard time on March 2, 2012, the retirement system shall permit each qualified participant who is a qualified participant on December 31, 2011 to make an election to opt out of the health insurance coverage premium that would have been paid by this state under section 68 and opt in to the tax-deferred account provisions of this section effective April 1, 2012. A qualified participant who is a qualified participant on December 31, 2011 and who does not make the election under this subsection continues to be eligible for the health insurance coverage premium paid by this state under section 68 and is not eligible for the tax-deferred account provisions of this section. A qualified participant who is a qualified participant on December 31, 2011 and who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premium that would have been paid by this state under section 68 as if that section continued to apply and for the portion of the amount to be calculated under subsection (7) for crediting to a tax-deferred account. This subsection does not apply to any of the following:

(a) A former member who made an election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(d) A former qualified participant who was a former qualified participant on December 31, 2011.

(6) Except as otherwise provided in this subsection, a former qualified participant who has 10 or more years of service on or before December 31, 2011 and who is reemployed by this state on or after January 1, 2012 and before January 1, 2014 may make an election under this subsection and receive an amount, if any, as determined under this section. Beginning on the date of the former qualified participant's reemployment and ending 60 days after the former qualified participant's first pay date, the retirement system shall permit the former qualified participant to make an election to opt out of the health insurance coverage premium that would have been paid by this state under section 68 and opt in to the tax-deferred account provisions of this section effective on or after the former qualified participant's date of reemployment. If the former qualified participant does not make the election under this subsection, he or she continues to be eligible for the health insurance coverage premium paid by this state under section 68 and is not eligible for the tax-deferred account provisions of this section. A former qualified participant who makes the election under this subsection ceases to accrue years of service credit for purposes of calculating a portion of the health insurance coverage premium that would have been paid by this state under section 68 as if that section continued to apply and for purposes of calculating the portion of the amount to be credited to a tax-deferred account under subsection (7). This subsection does not apply to any of the following:

(a) A former member who made an election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(7) Except as otherwise provided in this section, in lieu of any health insurance coverage premium that might have been paid by this state under section 68, the retirement system shall calculate an amount to be credited at termination to an appropriate tax-deferred account for each qualified participant who makes an election under subsection (5) or (6). The amount described in this subsection shall be an amount calculated to approximate the actuarial present value as of 12 midnight March 31, 2012 of the projected retirant health benefits based on the current benefit structure under section 68 and the qualified participant's years of service as of March 31, 2012. The amount calculated under this subsection shall be equal to the product of all of the following as determined by the retirement system in consultation with the actuary for the system:

(a) An average monthly premium of $1,000.00, payable for the life of the qualified participant, which approximates the overall average value of all types of premium coverages for single and multiple lives during both pre-medicare and post-medicare periods.

(b) A frozen benefit accrual percent that is the product of 3% and the qualified participant's years of service as of March 31, 2012, up to 30 years.

(c) A deferred life annuity factor equal to the actuarial present value as of March 31, 2012 of $1.00 per month payable for the life of the qualified participant, based on the following actuarial assumptions:

(i) An interest discount rate of 4% annually for all future years, which approximates the use of an assumed rate of investment return or interest discount rate of 8%, combined with an assumption that the average premium is projected to increase 4% annually for all future years.

(ii) Mortality rates based on a 50% male - 50% female blend of the 1994 group annuity mortality table set forward 1 year for both males and females.

(iii) Commencement of the $1.00 per month deferred life annuity based on an assumption that the qualified participant will terminate employment upon reaching age 60 and that the qualified participant would have received health insurance coverage immediately upon termination of employment.

(8) The amount calculated under subsection (7) shall be adjusted annually from March 31, 2012 to the date of the qualified participant's actual termination of employment. Except as otherwise provided in this subsection, the retirement system shall establish the amount of the annual adjustment to be equal to the change in the medical care component of the United States consumer price index for the most recent 12-month period for which data are available from the bureau of labor statistics of the United States department of labor. The adjustment under this subsection shall not be less than 0% and shall not be more than 4%.

(9) The amount calculated under subsection (7) and adjusted under subsection (8) shall be credited at the qualified participant's first termination of employment following December 31, 2011, to the qualified participant's tax–deferred account according to the following schedule:

(a) One hundred percent of the calculated amount to a qualified participant who is at least 60 years of age with at least 10 years of service or is at least 55 years of age with at least 30 years of service.

(b) Fifty percent of the calculated amount to a qualified participant who has at least 10 years of service and who does not meet the age and service qualifications of subdivision (a).

(10) An individual who is a former qualified participant on December 31, 2011, who has 10 or more years of service on or before December 31, 2011, and who is reemployed by this state on or after January 1, 2014 shall be treated in the same manner as a qualified participant under this section who made the election under subsection (5) and shall receive an amount, if any, as determined under this section. This subsection does not apply to any of the following:

(a) A former member who made the election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(11) In lieu of any other health insurance coverage that might have been paid by this state, a credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, shall be made by this state in the amounts and to the qualified participants or former qualified participants as follows:

(a) Two thousand dollars to a qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment.

(b) One thousand dollars to a qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment.

(c) Two thousand dollars to a former qualified participant who has less than 10 years of service as of December 31, 2011, who is reemployed by this state on or after January 1, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment following December 31, 2011. This subdivision does not apply to an individual described in subsection (10)(a), (b), or (c).

(d) One thousand dollars to a former qualified participant who has less than 10 years of service as of December 31, 2011, who is reemployed by this state on or after January 1, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment following December 31, 2011. This subdivision does not apply to an individual described in subsection (10)(a), (b), or (c).

(e) Two thousand dollars shall be the minimum amount credited to a qualified participant who made an election under subsection (5) and who does not otherwise qualify for an amount or qualifies for a lesser amount under this subsection at his or her first termination of employment after December 31, 2011.

(12) The retirement system shall determine a method to implement subsections (5) to (11), including a method for crediting the amounts in subsection (9) to comply with any contribution limits imposed by the internal revenue code, including, but not limited to, crediting of payments before termination of employment.

(13) Subsections (5) to (11) do not apply to a qualified participant who is eligible for health insurance coverage under section 67a(4) or (8).

(14) On or before January 1, 2017, the retirement system shall provide a report to the chair of the house and senate appropriations committees that provides the projected impact of subsection (11) as it applies to qualified participants entered upon the payroll of this state on or after January 1, 2017 with regard to the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared under section 12(1).

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the

portion that will cause the disqualification does not apply."

**38.68c Employment of retiree receiving retirement allowance; stopping retirement payment; applicability; "employed by this state" defined; coordination of benefits provision; exceptions to subsection (1); definitions.**

Sec. 68c.

(1) Except as otherwise provided in this section, a retirant who is receiving a retirement allowance under this act and is employed by this state beginning after October 1, 2007 agrees to forfeit his or her right to receive that retirement allowance during this period of state employment. The retirement system shall stop payment of the retirement allowance to a retirant described in this subsection during this period of state employment and shall reinstate payment of the retirement allowance without recalculation when the period of state employment ceases. This subsection does not apply to a retirant who is directly or indirectly employed by this state on October 1, 2007 while he or she remains in the position held by the retirant on October 1, 2007. As used in this subsection, "employed by this state" means employed directly by this state as an employee, indirectly by this state through a contractual arrangement with other parties, or by engagement of the retirant by this state as an independent contractor. This subsection does not apply to a retirant who is engaged as an independent contractor on October 1, 2010 while the retirant remains engaged in the same contract that was held by the retirant on October 1, 2010 without amendment or extension.

(2) A hospital, medical-surgical, and sick care benefits plan, dental plan, vision plan, and hearing plan that covers retirants, retirant allowance beneficiaries, former qualified participants, and health benefit dependents under this act must contain a coordination of benefits provision that provides all of the following:

(a) If the person covered under any of the plans is also eligible for Medicare, the benefits under Medicare must be determined before the health insurance benefits under this act.

(b) If a person covered under any of the plans provided by this act is also covered under another plan that contains a coordination of benefits provision, the benefits must be coordinated as provided in the coordination of benefits act, 1984 PA 64, MCL 550.251 to 550.254.

(c) If the person covered under any of the plans provided by this act is also covered under another plan that does not contain a coordination of benefits provision, the benefits under the other plan must be determined before the benefits provided under this act.

(3) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The retirant is hired to provide health care services to individuals under the jurisdiction of the department of corrections.

(b) The retirant is hired in a position that is limited in term, no benefits are paid, and pay is on a per diem basis.

(c) The department of corrections provides written notice to the state budget office and the department of technology, management, and budget that attempts have been made to fill the position through postings and recruitment and that the position vacancy still exists.

(d) The department of corrections reports the employment of a retirant under this subsection within 30 days of employment of the retirant to the state budget office and the department of technology, management, and budget. The report must include the name of the retirant, the capacity in which the retirant is employed, and the total compensation paid to the retirant.

(e) The retirant retired after a bona fide termination.

(4) Subsection (1) does not apply to the appointment of a retirant who retired after a bona fide termination and who was an assistant attorney general as a special assistant attorney general if the attorney general determines that, as a result of his or her previous employment with this state, the retirant possesses specialized expertise and experience necessary for the appointment and that the appointment is the most cost-effective option for this state.

(5) Until 2 years after the effective date of the 2022 amendatory act that amended this subsection, subsection (1) does not apply to a retirant if all of the following apply:

(a) The department of corrections hires the retirant to provide for the custody of individuals under the jurisdiction of the department of corrections.

(b) The retirant is hired in a position that is limited in term and no benefits are paid.

(c) The retirant retired before January 1, 2022 and after a bona fide termination of employment.

(6) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The department of attorney general contracts with the retirant as a witness, expert, or consultant for litigation involving this state. The contract must provide that the retirant's service as a witness, expert, or consultant ends at the conclusion of the litigation.

(b) The attorney general determines that, as a result of the retirant's previous employment with this state, the

retirant possesses specialized expertise and experience necessary for the litigation and the contract is the most cost-effective option for the state.

(c) The retirant retired after a bona fide termination of employment.

(7) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The retirant is hired by the department of natural resources for active wildland fire suppression.

(b) There is an immediate continual need for prequalified, skilled, and trained personnel to address wildfire suppression.

(c) The retirant works no more than 600 hours in a fiscal year.

(d) The retirant is hired in a position that is limited in term, no benefits are paid, and the pay is not more than 70% of the maximum hourly wage granted to classified civil service employees employed by the department of natural resources to perform the same duties as the retirant for the fiscal year during which the retirant is employed.

(e) The department of natural resources reports the employment of a retirant under this subsection within 30 days after employment and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the state budget office and the department of technology, management, and budget. The report required under this subdivision must include the name of the retirant, the capacity in which the retirant is employed, the equivalent civil service position in which the retirant is employed, the hourly wage paid to the retirant, and the total hours of service provided by the retirant for the fiscal year. The department of natural resources may submit a report required under this subdivision electronically.

(f) By March 1 of each year, the department of natural resources submits a summary of all the reports required under subdivision (e) for the preceding fiscal year to the house of representatives and senate appropriations subcommittees that consider the budget of the department of natural resources, the state budget office, the house and senate fiscal agencies, and the department of technology, management, and budget. The department of natural resources may submit a summary required under this subdivision electronically.

(8) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The retirant is employed by the legislative service bureau as legal counsel through a contractual arrangement.

(b) The legislative council administrator determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant and that the hiring of the retirant is the most cost-effective option for this state.

(c) The legislative service bureau reports the employment of a retirant under this subsection within 30 days after employment and within 30 days after termination of employment to the department of technology, management, and budget, office of retirement services. The legislative service bureau may submit a report required under this subdivision electronically.

(9) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The department of health and human services hires the retirant as a psychiatrist to provide mental health services to individuals in psychiatric hospitals operated by the department of health and human services.

(b) The department of health and human services determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant and that the hiring of the retirant is the most cost-effective option for this state.

(c) The retirant retired before October 1, 2015 and after a bona fide termination of employment.

(d) The department of health and human services reports the employment of a retirant under this subsection within 30 days after employment and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the state budget office and the department of technology, management, and budget. The report required under this subdivision must include the name of the retirant, the capacity in which the retirant is employed, the equivalent civil service position in which the retirant is employed, the hourly wage paid to the retirant, and the total hours of service provided by the retirant for the fiscal year. The department of health and human services may submit a report required under this subdivision electronically.

(e) By March 1 of each year, the department of health and human services submits a summary of all the reports required under subdivision (d) for the preceding fiscal year to the house of representatives and senate appropriations subcommittees that consider the budget of the department of health and human services, the state budget office, the house and senate fiscal agencies, and the department of technology, management, and budget. The department of health and human services may submit a summary required under this subdivision electronically.

(10) Until September 30, 2023, subsection (1) does not apply to a retirant if all of the following apply:

(a) The department of health and human services hires the retirant as a mental health professional other than a psychiatrist to provide mental health services to individuals in psychiatric hospitals operated by the department of health and human services.

(b) The retirant retired before October 1, 2015 and after a bona fide termination of employment.

(c) The department of health and human services determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant and that the hiring of the retirant is the most cost-effective option for this state.

(d) The department of health and human services reports the employment of a retirant under this subsection within 30 days after employment and within 30 days after termination of employment or within 30 days after the

end of each fiscal year, whichever occurs first, to the state budget office and the department of technology, management, and budget. The report required under this subdivision must include the name of the retirant, the capacity in which the retirant is employed, the equivalent civil service position in which the retirant is employed, the hourly wage paid to the retirant, and the total hours of service provided by the retirant for the fiscal year. The department of health and human services may submit a report required under this subdivision electronically.

(e) By March 1 of each year, the department of health and human services submits a summary of all the reports required under subdivision (d) for the preceding fiscal year to the house of representatives and senate appropriations subcommittees that consider the budget of the department of health and human services, the state budget office, the house and senate fiscal agencies, and the department of technology, management, and budget. The department of health and human services may submit a summary required under this subdivision electronically.

(11) Until March 31, 2021, subsection (1) does not apply to a retirant if all of the following apply:

(a) The Michigan unemployment insurance agency hires the retirant after March 15, 2020.

(b) The department of labor and economic opportunity determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant and that the hiring of the retirant is the most cost-effective option for this state.

(c) The department of labor and economic opportunity reports the employment of the retirant under this subsection within 30 days after employment or by November 19, 2020, whichever occurs first, and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the state budget office and the department of technology, management, and budget. The report required under this subdivision must include the name of the retirant, the capacity in which the retirant is employed, the equivalent civil service position in which the retirant is employed, the hourly wage paid to the retirant, and the total hours of service provided by the retirant for the fiscal year. The department of labor and economic opportunity may submit a report required under this subdivision electronically.

(12) Until October 21, 2020, subsection (1) does not apply to a retirant if all of the following apply:

(a) The Michigan occupational safety and health administration hires the retirant after March 15, 2020.

(b) The Michigan occupational safety and health administration determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant and that the hiring of the retirant is the most cost-effective option for this state.

(c) The Michigan occupational safety and health administration reports the employment of the retirant under this subsection within 30 days after employment or by November 19, 2020, whichever occurs first, and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the state budget office and the department of technology, management, and budget. The report required under this subdivision must include the name of the retirant, the capacity in which the retirant is employed, the equivalent civil service position in which the retirant is employed, the hourly wage paid to the retirant, and the total hours of service provided by the retirant for the fiscal year. The Michigan occupational safety and health administration may submit a report required under this subdivision electronically.

(13) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The retirant retired from the department of corrections.

(b) The retirant is hired indirectly by this state through a contractual arrangement with another party providing telecommunications services to the department of corrections for the primary purpose of collecting or analyzing intelligence generated within the department of corrections.

(c) The retirant has been retired for at least 30 days.

(d) The department of corrections determines that, as a result of the retirant's previous employment with this state, the retirant possesses specialized expertise and experience necessary for the hiring of the retirant to complete the tasks under subdivision (b).

(e) The department of corrections reports the employment of a retirant under this subsection within 30 days after employment and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the state budget office and the office of retirement services. The report required under this subdivision must include the name of the retirant and the capacity in which the retirant is employed. The department of corrections may submit a report required under this subdivision electronically.

(f) The department of corrections determines that either of the following applies:

(i) The retirant does not perform work that is the duty, service, or work included in the job classification of a civil service employee.

(ii) The retirant performs work that is solely the duty, service, or work included in the job classification of nonexclusively represented employees.

(14) As used in this section:

(a) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(b) "Mental health service" means service as that term as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(c) "Psychiatric hospital" means that term as defined in section 100b of the mental health code, 1974 PA 258,

MCL 330.1100b.

(d) "Psychiatrist" means that term as defined in section 100c of the mental health code, 1974 PA 258, MCL 330.1100c.

**History:** Add. 2007, Act 95, Imd. Eff. Oct. 1, 2007 ;-- Am. 2010, Act 54, Imd. Eff. Apr. 22, 2010 ;-- Am. 2010, Act 185, Imd. Eff. Sept. 30, 2010 ;-- Am. 2011, Act 264, Imd. Eff. Dec. 15, 2011 ;-- Am. 2012, Act 432, Imd. Eff. Dec. 21, 2012 ;-- Am. 2013, Act 112, Imd. Eff. Sept. 24, 2013 ;-- Am. 2015, Act 20, Imd. Eff. May 5, 2015 ;-- Am. 2016, Act 351, Imd. Eff. Dec. 21, 2016 ;-- Am. 2016, Act 524, Imd. Eff. Jan. 9, 2017 ;-- Am. 2018, Act 357, Imd. Eff. Nov. 20, 2018 ;-- Am. 2020, Act 18, Imd. Eff. Jan. 27, 2020 ;-- Am. 2020, Act 230, Imd. Eff. Oct. 20, 2020 ;-- Am. 2020, Act 314, Imd. Eff. Dec. 29, 2020 ;-- Am. 2022, Act 217, Imd. Eff. Oct. 14, 2022
**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.68d Administration of changes; appropriation.

Sec. 68d.

(1) There is appropriated for the fiscal year ending September 30, 2010, $1,600,000.00 to the office of retirement services in the department of technology, management, and budget for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized in subsection (1) is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $1,600,000.00.

(d) The estimated completion date for the work project is September 30, 2011.

**History:** Add. 2010, Act 185, Imd. Eff. Sept. 30, 2010
**Compiler's Notes:** Enacting section 1 of Act 185 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.68e Appropriation.

Sec. 68e.

(1) There is appropriated for the fiscal year ending September 30, 2012 $1,900,000.00 to the office of retirement services in the department of technology, management, and budget for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized under subsection (1) is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $1,900,000.00.

(d) The estimated completion date for the work project is September 30, 2013.

**History:** Add. 2011, Act 264, Imd. Eff. Dec. 15, 2011

**Compiler's Notes:** Enacting section 1 of Act 264 of 2011 provides:"Enacting section 1. If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."

### 38.69 Exemptions from taxation; subject to public employee retirement benefit protection law; right of setoff to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors in records and actions.

Sec. 69.

(1) Distributions from employer contributions made pursuant to section 63(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 63(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax. Distributions from employer contributions made pursuant to section 63(2) and (3) and earnings on those employer contributions and distributions from employee contributions made pursuant to section 63(3) and earnings on those employee contributions are subject to the public employee retirement benefit protection act.

(2) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

**History:** Add. 1996, Act 487, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 99, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Section 2 of Act 487 of 1996 provides:"If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

## TEACHERS' TENURE

## Act 4 of 1937 (Ex. Sess.)

AN ACT relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1964, Act 2, Eff. Aug. 28, 1964
**Popular Name:** Teachers' Tenure Act

*The People of the State of Michigan enact:*

Article I

DEFINITIONS.

### 38.71 "Teacher" defined.

Sec. 1.

(1) The term "teacher" as used in this act means a certificated individual employed for a full school year by any board of education or controlling board.

(2) An individual who is not certificated but is employed for a full school year pursuant to section 1233b of the revised school code, Act No. 451 of the Public Acts of 1976, being section 380.1233b of the Michigan Compiled Laws, or is employed pursuant to an annual vocational authorization or a temporary approval, as defined in state

board rule, is considered to be a teacher for the purpose of serving the probationary period under article II, but such an individual is not considered a teacher for the purpose of continuing tenure under article III until he or she becomes certificated.

(3) An individual employed as a teacher in a public school academy established under Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, is not considered a teacher during that employment for the purpose of continuing tenure under article III. However, an individual described in section 1(4) of article III is a teacher for the purpose of retaining continuing tenure as described in that section.

(4) Teacher does not include an individual whose teaching certificate has expired or has been suspended or revoked.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.71 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996
**Popular Name:** Teachers' Tenure Act

### 38.72 “Certificated” defined.

Sec. 2.

The term "certificated" means holding a valid teaching certificate, as defined by the state board of education. For the purpose of this section, an individual is considered to be holding a valid teaching certificate if the individual has on file with his or her employing school district either an appropriate teaching certificate issued by the state board of education or, if the individual's application for a teaching certificate has not been confirmed or rejected by the state board, written evidence from the individual's teacher education college that he or she meets the requirements described in section 1535 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1535 of the Michigan Compiled Laws.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.72 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993
**Popular Name:** Teachers' Tenure Act
**Admin Rule:** R 390.661 of the Michigan Administrative Code.

### 38.73 “Controlling board” defined.

Sec. 3.

As used in this act, "controlling board" means all boards having the care, management, or control over public school districts and public educational institutions other than a public school academy established under the revised school code, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.73 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996
**Popular Name:** Teachers' Tenure Act

### 38.74 "Demote" defined.

Sec. 4.

The word "demote" means to suspend without pay for 15 or more consecutive days or reduce compensation for a particular school year by more than an amount equivalent to 30 days' compensation or to transfer to a position carrying a lower salary. However, demote does not include discontinuance of salary under section 3 of article IV or

a reduction in personnel, including, but not limited to, a reduction in workweeks or workdays.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.74 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 124, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011 ;-- Am. 2023, Act 225, Eff. July 1, 2024
**Popular Name:** Teachers' Tenure Act

### 38.75 School year; definition.

Sec. 5.

The "school year" shall be defined as the legal school year at the time and place where service was rendered.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.75
**Popular Name:** Teachers' Tenure Act

## Article II
## PROBATIONARY PERIOD.

### 38.81 Teachers' probationary period; continuing tenure.

Sec. 1.

(1) Subject to subsections (2) and (3) and section 3b of this article, a teacher is in a probationary period during his or her first 5 full school years of employment.

(2) Subject to section 3b of this article, a teacher under contract but not on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection is in a probationary period during his or her first 4 full school years of employment.

(3) A teacher on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection continues to be on continuing tenure even if the teacher has not served for at least 5 full school years of employment.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.81 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.82 Probationary period.

Sec. 2.

A teacher shall not be required to serve more than 1 probationary period in any 1 school district or institution.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.82 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.82a Probationary teacher rated as effective; displacement.

Sec. 2a.

A probationary teacher who is rated as effective on the probationary teacher's most recent year-end performance evaluation under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, is not subject to displacement by a teacher on continuing tenure solely because the other teacher has continuing tenure.

**History:** Add. 2011, Act 101, Imd. Eff. July 19, 2011 ;-- Am. 2023, Act 225, Eff. July 1, 2024
**Popular Name:** Teachers' Tenure Act

### 38.83 Controlling board; statements of performance and notices of dismissal; issuance to probationary teachers.

Sec. 3.

(1) Before the end of each school year, the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his or her work has been effective. Subject to subsection (2), a probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified in writing at least 15 days before the end of the school year that his or her services will be discontinued.

(2) A teacher who is in a probationary period may be dismissed from his or her employment by the controlling board at any time.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.83 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.83a Teacher in probationary period; individualized development plan; performance evaluation; basis.

Sec. 3a.

The controlling board of a probationary teacher's employing school district shall ensure that the teacher is provided with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher and that the teacher is provided with at least an annual year-end performance evaluation each year during the teacher's probationary period. The annual year-end performance evaluation shall be based on classroom observations and shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators. A performance evaluation shall be conducted in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249.

**History:** Add. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.83b Successful completion of probationary period; conditions.

Sec. 3b.

(1) Before July 1, 2024, and except as otherwise provided in subsection (2), a teacher is not considered to have successfully completed the probationary period unless the teacher has been rated as effective or highly effective on

the teacher's 3 most recent year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 5 full school years of employment in a probationary period.

(2) Before July 1, 2024, if a teacher has been rated as highly effective on 3 consecutive year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 4 full school years of employment in a probationary period, the teacher is considered to have successfully completed the probationary period.

(3) Beginning July 1, 2024, if a teacher has been rated as effective on or after July 1, 2024, or effective or highly effective before July 1, 2024, on 3 of the teacher's year-end performance evaluations, including the most recent year-end performance evaluation, under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 4 full school years of employment in a probationary period, the teacher is considered to have successfully completed the probationary period.

**History:** Add. 2011, Act 101, Imd. Eff. July 19, 2011 ;-- Am. 2023, Act 225, Eff. July 1, 2024 ;-- Am. 2024, Act 134, Eff. Apr. 2, 2025
**Popular Name:** Teachers' Tenure Act

### 38.84 Probationary period; portions of act inapplicable.

Sec. 4.

Articles 4, 5 and 6 shall not apply to any teacher deemed to be in a period of probation.

**History:** Add. 1963, Act 242, Eff. Sept. 6, 1963
**Popular Name:** Teachers' Tenure Act

## Article III
## CONTINUING TENURE.

### 38.91 Teacher on continuing tenure; program operated by consortium of districts; teacher employed in public school academy; adult education; contracts of employment in other than classroom; salary; extra duty for extra pay.

Sec. 1.

(1) After the satisfactory completion of the probationary period, a teacher is considered to be on continuing tenure under this act. A teacher on continuing tenure shall be employed continuously by the controlling board under which the probationary period has been completed and shall not be dismissed or demoted except as specified in this act. Continuing tenure is held only in accordance with this act.

(2) If a teacher employed in a program operated by a consortium of school districts was previously on continuing tenure in a school district that participates in the consortium, the teacher shall be considered to be on continuing tenure only in that school district.

(3) If a teacher employed in a program operated by a consortium of school districts was not previously on continuing tenure in a school district that participates in the consortium and satisfactorily completes the probationary period, the teacher shall be considered to be on continuing tenure only in the school district that is the fiscal agent for the consortium. However, if there is a written agreement between the teacher and another participating school district that provides that the teacher will have continuing tenure in that school district, the teacher shall be considered to be on continuing tenure only in that school district and shall not be considered to be on continuing tenure in the school district that is the fiscal agent for the consortium.

(4) If a teacher employed in a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is on leave of absence from a school district and was on continuing tenure in the school district at the time he or she began the leave of absence, the teacher retains continuing tenure in that school district during the period he or she is employed in the public school academy.

(5) If a teacher satisfactorily completes the probationary period as an adult education teacher, the teacher shall be considered to be on continuing tenure in the school district only for adult education and shall not by virtue of completing the probationary period as an adult education teacher be considered to be on continuing tenure in the

school district for elementary and secondary education.

(6) If a teacher satisfactorily completes the probationary period as an elementary or secondary education teacher, the teacher shall be considered to be on continuing tenure in the school district only for elementary and secondary education and shall not by virtue of completing the probationary period as an elementary or secondary education teacher be considered to be on continuing tenure in the school district for adult education.

(7) For a teacher employed in a capacity other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, under a contract of employment made with the teacher after the completion of the probationary period, a controlling board shall not provide in the contract of employment that the teacher will be considered to be granted continuing tenure in that other capacity by virtue of the contract of employment. Such a teacher shall be considered to have been granted continuing tenure only as an active classroom teacher in the school district. Upon the termination of such a contract of employment, if the controlling board does not reemploy the teacher under contract in the capacity covered by the contract, the teacher shall be continuously employed by the controlling board as an active classroom teacher. Failure of a controlling board to reemploy a teacher in any such capacity upon the termination of any such contract of employment described in this subsection shall not be considered to be a demotion under this act. The salary in the position to which the teacher is assigned shall be the same as if the teacher had been continuously employed as an active classroom teacher.

(8) Continuing tenure does not apply to an annual assignment of extra duty for extra pay.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1941, Act 119, Imd. Eff. May 23, 1941 ;-- CL 1948, 35.91 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.92 Teacher on continuing tenure; employment by another controlling board.

Sec. 2.

If a teacher on continuing tenure is employed by another controlling board, the teacher is not subject to another probationary period of more than 2 years beginning with the date of employment, and may at the option of the controlling board be placed immediately on continuing tenure. A notice provided under section 3 of article 2 shall be given not later than 60 days before the completion of the probationary period. If a teacher on continuing tenure becomes an employee of another controlling board as a result of school district annexation, consolidation or other form of school district reorganization, the teacher shall be placed on continuing tenure within 30 days unless the controlling board, by a 2/3 vote on an individual basis, places the teacher on not more than 2 years' probation. However, if such a teacher is under contract but not on continuing tenure with the employing board as of the effective date of the amendatory act that added this sentence, the teacher is not subject to another probationary period of more than 1 year beginning with the date of employment.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.92 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993
**Popular Name:** Teachers' Tenure Act

### 38.93 Teacher on continuing tenure; year-end performance evaluation; individualized development plan.

Sec. 3.

The controlling board of the school district employing a teacher on continuing tenure shall ensure that the teacher is provided with a year-end performance evaluation in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249. If the teacher has received a needing-support rating on a year-end performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The individualized development plan must require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days. The year-end performance evaluation must be based on multiple

classroom observations conducted during the period covered by the evaluation and must include, in addition to the factors required under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, at least an assessment of the teacher's progress in meeting the goals of the teacher's individualized development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators.

**History:** Add. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011 ;-- Am. 2023, Act 225, Eff. July 1, 2024
**Popular Name:** Teachers' Tenure Act

## Article IV
## DISCHARGE, DEMOTION OR RETIREMENT.

### 38.101 Teacher on continuing tenure; discharge, demotion, or retirement; continuation of contracts of teachers over retirement age.

Sec. 1.

(1) Except as otherwise provided in section 1a of this article, discharge or demotion of a teacher on continuing tenure may be made only for a reason that is not arbitrary or capricious and only as provided in this act.

(2) This act does not prevent any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437, or, having established a reasonable retirement age policy, from temporarily continuing on a year-to-year basis on criteria equally applied to all teachers the contract of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1941, Act 119, Imd. Eff. May 23, 1941 ;-- CL 1948, 38.101 ;-- Am. 1966, Act 15, Imd. Eff. Apr. 6, 1966 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 136, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.101a Teacher rights subject to MCL 380.1230d and 380.1535a.

Sec. 1a.

The rights of a teacher on continuing tenure under this article are subject to sections 1230d(4) and 1535a(4) and (5) of the revised school code, 1976 PA 451, MCL 380.1230d and 380.1535a. For the purposes of this article, a conviction of a violation of section 1230d of the revised school code, 1976 PA 451, MCL 380.1230d, or a violation of 1 of the crimes listed in section 1535a(1) of the revised school code, 1976 PA 451, MCL 380.1535a, is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds to support the discharge or demotion of a teacher on continuing tenure.

**History:** Add. 2005, Act 124, Eff. Jan. 1, 2006
**Popular Name:** Teachers' Tenure Act

### 38.102 Charges against teacher; filing with controlling board; decision to proceed upon charges; written statement of charges and teacher's rights.

Sec. 2.

All charges against a teacher shall be made in writing, signed by the person making the charges, and filed with the secretary, clerk, or other designated officer of the controlling board, and a copy of the charges shall be provided to the teacher. The charges shall specify a proposed outcome of either discharge or a specific demotion of the teacher. The controlling board shall decide whether or not to proceed upon the charges, or may modify the charges and decide to proceed upon the charges as modified, not later than 10 days after the charges are filed with the controlling board. A decision to proceed upon the charges shall not be made except by a majority vote of the controlling board and shall be reduced to writing. The controlling board, if it decides to proceed upon the charges, shall furnish the teacher not later than 5 days after deciding to proceed upon the charges with the written decision to proceed upon the charges, a written statement of the charges and a statement of the teacher's rights under this article.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.102 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993
**Popular Name:** Teachers' Tenure Act

### 38.103 Suspension of teacher pending certain conditions; compensation.

Sec. 3.

(1) On the filing of charges in accordance with this article, the controlling board may suspend the accused teacher from active performance of duty until 1 of the following occurs:

(a) The teacher fails to contest the decision to proceed upon the charges within the time period specified in section 4(1) of this article.

(b) A preliminary decision and order discharging or demoting the teacher is issued by the administrative law judge under section 4(5)(i) of this article.

(c) If the preliminary decision and order is to reinstate the teacher, a final decision and order is rendered by the tenure commission under section 4(5)(m) of this article.

(2) Except as otherwise provided in subsections (3) and (4), if a teacher is suspended under subsection (1), the teacher's salary shall continue during the suspension.

(3) If criminal charges have been filed against a teacher, a controlling board may place the teacher's salary in an escrow account during a suspension under subsection (1). Before placing the teacher's salary in an escrow account as described in this subsection, the controlling board shall provide to the teacher notice of the charges, an explanation of the employer's evidence, and an opportunity for the teacher to respond, either in writing or in person. Health or life insurance benefits, or both, may be continued during the suspension at the option of the controlling board. If the administrative law judge issues a preliminary decision and order under section 4(5)(i) of this article to reinstate the teacher or for payment for salary lost by the teacher during the suspension, the controlling board shall release the money in the escrow account to the teacher to the extent necessary to effectuate the order. If the teacher fails to timely contest the decision to proceed upon the charges or if the administrative law judge issues a preliminary decision and order under section 4(5)(i) of this article discharging or demoting the teacher, the controlling board is entitled to the money in the escrow account.

(4) If a teacher who is suspended under subsection (1) is convicted of a felony that is not a listed offense or of a misdemeanor that is a listed offense, the controlling board may discontinue the teacher's salary effective upon the date of the conviction. If the teacher is convicted of a felony that is a listed offense, the controlling board shall discontinue the teacher's salary effective upon the date of conviction. As used in this subsection, "listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(5) If a preliminary decision and order discharging a teacher is issued by the administrative law judge and the tenure commission subsequently reverses the preliminary decision and order of the administrative law judge, the tenure commission may order back pay.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.103 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 124, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.104 Decision to proceed upon charges; appeal with tenure commission; filing; notice; conduct of

**hearing; dismissal of appeal or denial of discharge or demotion; appeal to court of appeals.**

Sec. 4.

(1) A teacher on continuing tenure may contest the controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission and serving a copy of the claim of appeal on the controlling board not later than 20 days after receipt of the controlling board's decision. The controlling board shall file its answer with the tenure commission and serve a copy of the answer on the teacher not later than 10 days after service of the claim of appeal. If the teacher does not contest the controlling board's decision in the time and manner specified in this subsection, the discharge or demotion specified in the charges takes effect and the teacher shall be considered to have waived any right to contest the discharge or demotion under this act.

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 45 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

(3) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with rules promulgated by the tenure commission.

(5) The hearing and tenure commission review shall be conducted in accordance with the following:

(a) The hearing shall be public or private at the option of the teacher.

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the tenure commission offices in Lansing. The administrative law judge's necessary travel expenses associated with conducting the hearing outside Lansing shall be borne equally by the tenure commission and the controlling board.

(c) Both the teacher and the controlling board may be represented by legal counsel.

(d) Testimony at the hearing shall be on oath or affirmation.

(e) A stenographer shall make a full record of the proceedings of the hearing. The cost of employing the stenographer and of providing the record shall be borne equally by the tenure commission and the controlling board.

(f) The administrative law judge may subpoena witnesses and documentary evidence on his or her own motion, and shall do so at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, the party on whose behalf the subpoena was issued may file a petition in the circuit court for the county in which the hearing is held for an order requiring compliance. Failure to obey such an order of the court may be punished by the court as contempt.

(g) The hearing shall be concluded not later than 75 days after the teacher's claim of appeal was filed with the tenure commission.

(h) The administrative law judge shall make the necessary orders to ensure that the case is submitted for decision not later than 50 days after the hearing is concluded.

(i) Not later than 60 days after submission of the case for decision, the administrative law judge shall serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission. The preliminary decision and order shall grant, deny, or modify the discharge or demotion specified in the charges.

(j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, rulings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of the other parties within the time limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.

(k) Not later than 10 days after being served with the other party's exceptions and brief, a party may file a statement of cross-exceptions responding to the other party's exceptions or a statement in support of the preliminary decision and order with the tenure commission, along with a written brief in support of the cross-exceptions or of the preliminary decision and order. The party shall serve a copy of the statement of cross-exceptions or of the statement in support of the preliminary decision and order and a copy of the brief on each of the other parties.

(l) A matter that is not included in a statement of exceptions filed under subdivision (j) or in a statement of cross-exceptions filed under subdivision (k) is considered waived and cannot be heard before the tenure commission or on appeal to the court of appeals.

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt,

modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

(6) After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's rules.

(7) A party aggrieved by a final decision and order of the tenure commission may appeal the decision and order to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.104 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

### 38.104a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.

Sec. 4a.

(1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a hearing held under this article in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The controlling board shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

**History:** Add. 1987, Act 47, Eff. Jan. 1, 1988 ;-- Am. 1998, Act 326, Imd. Eff. Aug. 3, 1998
**Popular Name:** Teachers' Tenure Act

### 38.105 Repealed. 2011, Act 101, Imd. Eff. July 19, 2011.

**Compiler's Notes:** The repealed section pertained to appointment of teacher on continuing tenure to first vacancy in school district.

## Article V
## RESIGNATION AND LEAVE OF ABSENCE.

### 38.111 Resignation or leave of absence; notice required.

Sec. 1.

No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least 60 days before September first of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.111
**Popular Name:** Teachers' Tenure Act

### 38.112 Leave of absence; physical or mental disability; reinstatement.

Sec. 2.

(1) Any controlling board upon written request of a teacher may grant leave of absence for a period not to exceed 1 year, subject to renewal at the will of the board. Additionally, a controlling board may grant a leave of absence because of physical or mental disability without receiving a written request from a teacher for a period not to exceed 1 year, subject to renewal at the will of the controlling board. A teacher who is placed on an unrequested leave of absence has the right to a hearing on the unrequested leave of absence in accordance with the provisions for a hearing in section 4 of article IV. A leave of absence does not serve to terminate continuing tenure previously acquired under this act.

(2) As a condition to reinstating the teacher at the expiration of the leave of absence, a controlling board may require a teacher who is on an unrequested leave of absence due to physical or mental disability to furnish verification acceptable to the controlling board of the teacher's ability to perform his or her essential job functions.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.112 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011
**Popular Name:** Teachers' Tenure Act

## Article VI
## RIGHT TO APPEAL.

### 38.121 Appeal to state tenure commission; notice; hearing.

Sec. 1.

A teacher who has achieved continuing tenure status may appeal to the tenure commission any decision of a controlling board under this act, other than a decision governed by article IV on discharge or demotion of a teacher on continuing tenure, within 20 days from the date of the decision. The tenure commission shall provide for a hearing on the appeal. Notice and conduct of the hearing shall be the same as provided in article IV and in rules promulgated by the tenure commission.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.121 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993
**Popular Name:** Teachers' Tenure Act
**Admin Rule:** R 38.131 et seq. of the Michigan Administrative Code.

Article VII
STATE TENURE COMMISSION.

### 38.131 State tenure commission; creation, membership; superintendent as ex-officio secretary; legal advisor.

Sec. 1.

There is hereby created a state tenure commission of 5 members: 2 of whom shall be classroom instructors, 1 a member of a board of education of a graded or city school district, 1 a person not a member of a board of education or a teacher, and 1 a superintendent of schools. The superintendent of public instruction shall be ex officio secretary of the commission, and the attorney general shall assign to the commission an assistant who shall be legal advisor to the commission.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.131 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963
**Popular Name:** Teachers' Tenure Act

### 38.132 Tenure commission; members, appointment, terms, vacancies.

Sec. 2.

Within 30 days after the effective date of this act, the governor shall appoint the members of the tenure commission for the following terms: One for a term of 3 years, 1 for a term of 2 years and 1 for a term of 1 year. Each term shall begin on the first day of September. Immediately preceding the expiration of their respective terms the governor shall appoint succeeding members of the tenure commission for terms of 5 years. In the event of a vacancy on the tenure commission the governor shall immediately appoint a successor to complete the unexpired term.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.132
**Popular Name:** Teachers' Tenure Act

### 38.133 Tenure commission; geographical qualifications of members.

Sec. 3.

Not more than 1 member of the tenure commission shall be appointed from any 1 school district.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.133
**Popular Name:** Teachers' Tenure Act

### 38.134 Tenure commission; qualifications of teacher member.

Sec. 4.

Any teacher appointed to the tenure commission after September 1, 1938, must be on continuing tenure.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.134
**Popular Name:** Teachers' Tenure Act

### 38.135 Tenure commission; membership of teacher not to affect tenure.

Sec. 5.

Membership on the state tenure commission shall not adversely affect the status of the teacher's tenure with a controlling board.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.135
**Popular Name:** Teachers' Tenure Act

### 38.136 Tenure commission; times and places of meetings; conducting business at public meeting; notice of meeting.

Sec. 6.

(1) The tenure commission shall meet twice a year at stated times in the city of Lansing, and at other times and in other places as determined by the commission.

(2) The business which the commission may perform shall be conducted in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.136 ;-- Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977
**Popular Name:** Teachers' Tenure Act

### 38.137 Tenure commission; powers.

Sec. 7.

The tenure commission is hereby vested with such powers as are necessary to carry out and enforce the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.137
**Popular Name:** Teachers' Tenure Act

### 38.138 Tenure commission; compensation and expenses.

Sec. 8.

The per diem compensation of the state tenure commission and the schedule for reimbursement of expenses shall be established annually by the legislature.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.138 ;-- Am. 1965, Act 8, Imd. Eff. Apr. 8, 1965 ;-- Am. 1975, Act 56, Imd. Eff. May 20, 1975
**Popular Name:** Teachers' Tenure Act

### 38.139 Tenure commission; board of review for cases appealed from decision of controlling board; location of records; availability of certain writings to public.

Sec. 9.

(1) The tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board. All records of the tenure commission shall be kept in the office of the superintendent of public instruction.

(2) A writing prepared, owned, used in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.139 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993
**Popular Name:** Teachers' Tenure Act

### 38.140 Tenure commission; organizational meeting, election of officers, rules and regulations.

Sec. 10.

Within 30 days after the effective date of this act, the tenure commission shall hold a meeting in the city of Lansing for the purpose of organization and the election of a chairman and secretary, both of whom shall be members of the commission. The tenure commission shall draw up rules and regulations and shall have the power to amend same and to provide for the conduct of its affairs in such manner as shall be consistent with the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.140
**Popular Name:** Teachers' Tenure Act
**Admin Rule:** R 38.131 et seq. of the Michigan Administrative Code.

### 38.141 Repealed. 1965, Act 8, Imd. Eff. Apr. 8, 1965.

**Compiler's Notes:** The repealed section provided two-year appropriation for expenses of the tenure commission.
**Popular Name:** Teachers' Tenure Act

## Article VIII
## DISTRICTS.

### 38.151 Application of act.

Sec. 1.

This act shall apply to all school districts of the state.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.151 ;-- Am. 1964, Act 2, Eff. Aug. 28, 1964
**Popular Name:** Teachers' Tenure Act

### 38.152 Repealed. 1964, Act 2, Eff. Aug. 28, 1964.

**Compiler's Notes:** The repealed section provided that school district board shall notify the superintendent of public instruction of results of election.
**Popular Name:** Teachers' Tenure Act

Article IX
PENALTY.

### 38.161 Violation of act; penalty.

Sec. 1.

Failure of any member of a controlling board to comply with any provisions of this act shall be deemed a violation of the law and shall subject said member to the same penalty as prescribed for a violation of the general school law.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.161
**Popular Name:** Teachers' Tenure Act

Article X
INCONSISTENT ACTS.

### 38.172 Teachers; waiver of rights in contracts prohibited.

Sec. 2.

No teacher may waive any rights and privileges under this act in any contract or agreement made with a controlling board. In the event that any section or sections of a contract or agreement entered into between a teacher and a controlling board make continuance of employment of such teacher contingent upon certain conditions which may be interpreted as contrary to the reasonable and just causes for dismissals, provided by this act, such section or sections of a contract or agreement shall be invalid and of no effect in relation to determination of continuance of employment of such teacher.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.172
**Popular Name:** Teachers' Tenure Act

Article XII

### 38.191 Effective date.

Sec. 1.

This act shall take effect and be in force from and after September first, 1937.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.191
**Popular Name:** Teachers' Tenure Act

## PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT

## Act 136 of 1945

38.201-38.366 Repealed. 1951, Act 207, Imd. Eff. June 14, 1951;—1956, Act 144, Imd. Eff. Apr. 16, 1956;—1965, Act 167, Imd. Eff. July 15, 1965;—1972, Act 100, Eff. Mar. 30, 1973;—1974, Act 244, Imd. Eff. Aug. 1, 1974;—1974, Act 259, Eff. July 1, 1975;—1976, Act 104, Imd. Eff. May 2, 1976;—1976, Act 357, Imd. Eff. Dec. 23, 1976;—1977, Act 58, Imd. Eff. July 12, 1977;—1980, Act 300, Imd. Eff. Oct. 31, 1980.

## WAYNE STATE UNIVERSITY EMPLOYEE RETIREMENT SYSTEM

### Act 78 of 1958

AN ACT to provide retirement benefits for certain employees of the board of governors of Wayne state university; and to make provisions for settlement of the respective annuity and pension liabilities in relation thereto.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

*The People of the State of Michigan enact:*

### 38.371 Wayne state university employee retirement system; definitions.

Sec. 1.

As used in this act:

(a) "Board of governors" means the board of governors of Wayne state university.

(b) "Board of education" means the board of education of the city of Detroit.

(c) "Retirement commission" means the retirement commission of the employee retirement system of the school district of the city of Detroit.

(d) "Retirement system" means the employee retirement system of the school district of the city of Detroit created and established by chapter 2 of Act No. 136 of the Public Acts of 1945, as amended, being sections 38.301 to 38.355 of the Compiled Laws of 1948.

(e) "Wayne service" means creditable service of an employee of the board of education who has been transferred to Wayne state university and includes creditable service prior to such transfer and service as an employee of the board of governors of Wayne state university thereafter.

(f) "Wayne retirement allowance" means the annuity, pension or retirement allowance payable to a person on account of Wayne service.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

### 38.372 Retirement allowance; payment prior to July 1, 1958.

Sec. 2.

Wayne retirement allowances payable on account of Wayne service terminating prior to July 1, 1958, shall be paid by the retirement system in accordance with the retirement system provisions in force at the time of such termination.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

## 38.373 Retirement allowance; payment after July 1, 1958.

Sec. 3.

Wayne retirement allowances on account of Wayne service not terminated prior to July 1, 1958, shall cease to be the obligation of the retirement system on July 1, 1958, and shall become the sole obligation of the board of governors. If any person included in the foregoing provisions has also continued in the employ of the board of education, the respective obligations of the retirement commission and the board of governors shall be settled by their mutual agreement, or if unable to agree, by the actuary hereinafter designated.

Establishment of retirement program.

In fulfillment of the obligations herein placed on it, the board of governors shall provide a retirement program with benefits for Wayne service prior to July 1, 1958, substantially equal to those provided in chapter 2 of Act No. 136 of the Public Acts of 1945, as amended, to June 30, 1956, or in the alternative the board of governors at its option shall provide total benefits at termination of employment substantially equal to those which would have been payable had the entire Wayne service been under the provisions of the aforesaid act and the retirement system which it established. Wayne service after July 1, 1958, shall be counted towards fulfillment of conditions applicable to the period of employment required for the vesting of rights and benefits under the provisions of said act.

**History:** 1958, Act 78, Eff. Sept. 13, 1958
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.

## 38.374 Separation of employees from Detroit school district employees retirement system; actuarial determination of credits and debits of board of governors and retirement commission.

Sec. 4.

A determination shall be made by the actuary for the legislative retirement system provided in sections 39 and 46 of Act No. 261 of the Public Acts of 1957, being sections 38.1039 and 38.1040 of the Compiled Laws of 1948, of the respective rights and the liabilities as to each other of the board of governors and the retirement commission out of the separation of the employees of the board of governors from the employees' retirement system. The respective debits and credits shall be determined as follows:

(a) The board of governors shall be debited and the retirement commission shall be credited with the amounts paid and the actuarily determined liability for the amounts to be paid as retirement benefits to the persons included in section 2, giving due allowance for the annuity deposits of the employees included in section 2.

(b) The board of governors shall be credited and the retirement commission shall be debited with the normal and supplemental annuity deposits to the credit of the employees included in section 3.

(c) The board of governors shall be credited and the retirement commission shall be debited with such portion of the assets of the retirement commission, exclusive of the normal and supplemental annuity deposits, held by it as shall equitably represent the interest of the employees included in sections 2 and 3, having in mind the source of the funds, the method of payment authorized by section 5, and the interests and equities of all persons in the retirement system, all as of July 1, 1956.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

## 38.375 Separation of employees from Detroit school retirement system; payments required; transfer of securities.

Sec. 5.

The payments required by the determination provided for in section 4 shall be made on or before December 31, 1958. Should this determination require a payment by the retirement commission to the board of governors, the retirement commission may transfer in lieu of cash securities held by it. The securities shall not have defaulted with respect to principal and interest payments and shall have an average yield and maturity equal to the average yield

and maturity of all assets of the retirement system for the fiscal year ended June 30, 1956.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

### 38.376 Separation of employees from Detroit school retirement system; payment of $1,000,000 by board of education to board of governors.

Sec. 6.

The board of governors shall accept the proposal of the board of education for the payment by the board of education to the board of governors in fulfillment of any obligations of the board of education with reference to retirement benefits for the persons included in the provisions of sections 2 and 3 of the sum of $1,000,000.00 on or before June 30, 1965, in approximately equal annual installments with interest of 3% per annum on unpaid balances after July 1, 1958.

**History:** 1958, Act 78, Eff. Sept. 13, 1958

## OPTIONAL RETIREMENT ACT OF 1967

### Act 156 of 1967

AN ACT to authorize the boards of control of certain state supported institutions of higher education to establish optional retirement programs for their teaching and administrative personnel.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967

*The People of the State of Michigan enact:*

### 38.381 Optional retirement act of 1967; short title.

Sec. 1.

This act shall be known and may be cited as the "optional retirement act of 1967".

**History:** 1967, Act 156, Imd. Eff. June 30, 1967

### 38.382 Definitions.

Sec. 2.

As used in this act:

(a) "Optional retirement program" means a system of retirement benefits established as a part of the plan of compensation for eligible teaching and administrative personnel.

(b) "Retirement system" means the Michigan public school employees' retirement system created by the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1408 of the Michigan Compiled Laws.

(c) "Eligible employees" means the members of the faculty and administrative staff of state supported institutions

of higher education on a full-time basis whose positions require the performance of professional services in the discharge of the educational or administrative functions of the institution.

(d) "State supported institution of higher education" means any of the following:

(i) Western Michigan university.

(ii) Eastern Michigan university.

(iii) Northern Michigan university.

(iv) Central Michigan university.

(v) Michigan technological university.

(vi) Ferris state university.

(vii) Lake Superior state university.

(viii) A community or junior college established pursuant to section 7 of article VIII of the state constitution of 1963.

(ix) A community or junior college established pursuant to part 25 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being sections 380.1601 to 380.1607 of the Michigan Compiled Laws.

(e) "Board of control" means the board charged with policy direction of a state supported institution of higher education.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967 ;-- Am. 1968, Act 185, Imd. Eff. June 20, 1968 ;-- Am. 1994, Act 296, Eff. Oct. 1, 1994

### 38.383 Optional retirement program; establishment; participation of eligible employees, terms and conditions.

Sec. 3.

An optional retirement program for eligible employees of state supported institutions of higher education is established. A board of control shall make the program available to all eligible employees in the component institutions, agencies and units subject to its control. Eligible employees may participate in the program, subject to such rules as may be prescribed by the board of control for its institution including provisions for classification and terms and conditions on which employees may participate.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967

### 38.383a Availability of program to state supported institution of higher education's employees.

Sec. 3a.

A state supported institution of higher education that before January 1, 1970 was part of another institution of higher education that had authority under this act to make the optional retirement program available to its eligible employees is authorized to continue making the optional retirement program available to the state supported institution of higher education's employees on and after its separation from the other institution of higher education.

**History:** Add. 1994, Act 296, Eff. Oct. 1, 1994

### 38.384 Board of control; purchase of contracts providing for optional program benefits for employees.

Sec. 4.

In the administration of the optional retirement program, a board of control shall provide for the purchase of contracts providing retirement and death benefits for or on behalf of eligible employees electing to be covered by the optional retirement program.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967

**38.385 Optional retirement program; election; time; reelection to retirement system.**

Sec. 5.

(1) An eligible employee, as of the date the optional retirement program becomes available and who is a member of the retirement system, may continue his membership in the retirement system or may elect to participate in the optional retirement program and retain a limited membership in the retirement system as provided in this section.

(2) An employee becoming eligible subsequent to the date the optional retirement program becomes available may elect to become a member of the retirement system or may elect to participate in the optional retirement programs.

(3) Within 90 days after the date the optional retirement program becomes available at the state supported institution of higher education, eligible employees shall elect to participate or not to participate. An employee who becomes eligible to participate in the optional retirement program subsequent to the date the program becomes available shall make his election within 90 days following the date on which he qualifies as an eligible employee. An eligible employee not exercising the option to participate in the optional retirement program is deemed to have elected membership in the retirement system.

(4) An employee who elected the optional retirement program pursuant to subsection (3) before September 1, 1974, may by written election to his employing institution reelect to become a member of the retirement system. Membership in the retirement system of all persons exercising this reelection shall be effective July 1, 1975, and shall apply only to earnings on and after July 1, 1975. A person eligible for reelection to the retirement system under this subsection and not having exercised reelection by March 1, 1976, shall be deemed to have elected to remain in the optional retirement program.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967 ;-- Am. 1975, Act 284, Imd. Eff. Dec. 2, 1975

**38.386 Optional retirement program; participant deemed limited member of retirement system; refund of contributions upon termination of service or death; computation of benefits; reelection to retirement system as bar to service credit.**

Sec. 6.

(1) An eligible employee electing to participate in the optional retirement program in accordance with section 5(1) is deemed to be a limited member of the retirement system for the purpose of determining his eligibility for rights and benefits in the retirement system. His continued service with a state supported institution of higher education while under the optional retirement program is deemed to be member service in the retirement system for the purpose of determining his eligibility for retirement benefits dependent upon a specified period of total service or upon attainment of a specified age while in service.

(2) If an eligible employee who has elected to participate in the optional retirement program in accordance with section 5(1) terminates service or dies before becoming eligible for a retirement benefit, he or his named beneficiary, is entitled to a refund of his contributions to the retirement system, including interest at the rate of 2 1/2% per annum.

(3) If an eligible employee has elected to participate in the optional retirement program and retains a limited membership in the retirement system in accordance with section 5(1), the basis for computation of his retirement benefits under the retirement system after his election to participate in the optional retirement program shall be all of the following:

(a) The credited service as of the time of making the election.

(b) The average of his annual compensation for those 5 consecutive years before the time of making the election which produces the highest amount, or, the average of his annual compensation before the time of making the election if his total credited service is less than 5 years.

(4) An eligible employee electing to participate in the optional retirement program, and his beneficiaries, is not entitled to a right or benefit under the retirement system other than to the extent the rights and benefits are

expressly provided for in this section.

(5) An employee who reelects to return to the retirement system under section 5(4), shall not be eligible to receive service credit for that period of time during which he was a member of the optional retirement program under this act.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967 ;-- Am. 1975, Act 284, Imd. Eff. Dec. 2, 1975

### 38.387 Optional retirement program; amounts to be disbursed and credited to employee's benefit.

Sec. 7.

For an eligible employee who has elected in accordance with section 5 to participate in the optional retirement program, the following amounts shall be disbursed and credited each fiscal year to his benefit in the optional retirement program:

(a) By the eligible employee, the amount which he would have been required to contribute during the year as a member of the retirement system.

(b) By the state supported institution of higher education, from funds subject to its control, for the benefit of all eligible employees, those amounts as may be determined by the board of control plus an amount equal to that required by federal statutes as the employer's contributions under the federal insurance contribution act for that employee.

(c) From the eligible employee such amounts, in addition to those required under subdivisions (a) and (b), as may be determined by the board of control.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967 ;-- Am. 1968, Act 185, Imd. Eff. June 20, 1968 ;-- Am. 1975, Act 284, Imd. Eff. Dec. 2, 1975

### 38.388 Federal social security old-age, survivors' and disability insurance coverage.

Sec. 8.

An eligible employee electing to participate in the optional retirement program shall have old-age, survivors and disability insurance coverage provided by the federal social security act.

**History:** 1967, Act 156, Imd. Eff. June 30, 1967

## COUNTY EMPLOYEES' CIVIL SERVICE SYSTEM

### Act 370 of 1941

AN ACT to establish and provide a civil service system in each of the counties of the state, now or hereafter having a population of 1,000,000 or more, according to the latest or each succeeding federal decennial census, and the various commissions, boards, departments and agencies thereof; to create a civil service commission, and to prescribe the powers and duties thereof; to provide certain exemptions from and classifications in civil service; to prescribe penalties for the violation of the provisions of this act; and to prescribe the manner of adoption of this act by each county.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- Am. 1959, Act 265, Imd. Eff. Sept. 4, 1959

*The People of the State of Michigan enact:*

### 38.401 County civil service system; purpose of act.

Sec. 1.

Civil service act; purpose. The purpose of this act is to guarantee to all citizens a fair and equal opportunity for public service; to establish conditions of service which will attract officers and employees of character and capacity, and to increase the efficiency of the county governmental departments, commissions, boards and agencies, by the improvement of methods of personnel administration.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.401
**Compiler's Notes:** The catchlines following the act section numbers of this act were incorporated as a part of the act when enacted.Section 423.201 et seq., prohibiting strikes by public employees and providing collective bargaining, negotiation, and enforced mediation of labor disputes arising out of public employment, operates, to the extent of repugnancy with MCL 38.401 et seq., as a partial repeal of the act providing for a county civil service commission. Wayne County Civil Service Commission v. Board of Supervisors, 384 Mich. 363, 184 N.W.2d 201 (1971).

### 38.402 County civil service system; adoption by referendum.

Sec. 2.

Upon the adoption of a resolution therefor by a majority vote of the members-elect of the board of supervisors of any county now or hereafter having a population of 1,000,000 or more, according to the latest or each succeeding federal decennial census, the question of adopting the county civil service system, as provided for in this act, shall be submitted to a vote of the electors of such county. The question shall be submitted and placed on the ballot at the next general or special election.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.402 ;-- Am. 1959, Act 265, Imd. Eff. Sept. 4, 1959

### 38.403 Referendum; time, notice, statement of question.

Sec. 3.

Election; time, notice. At least 3 weeks shall intervene between the adoption of the resolution by the board of supervisors and the time of holding such election. After the adoption of the resolution by the board of supervisors the county clerk shall give like notice of the submission of the question of the adoption of the county civil service system as is required by law in the case of elections to elect county officers. Said notice shall set forth the action of the board of supervisors and that the question will be stated on the ballot to be used at such election as follows: Shall the county civil service system, as provided for by Act No. .... of the Public Acts of 1941, be adopted in the county of .....?

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.403

### 38.404 Referendum; ballot, statement of question.

Sec. 4.

Same; ballots. Ballots shall be prepared and distributed, in the manner required by law, by the same officers prescribed by law for general elections. The question shall be stated on the ballot as follows, viz.: Shall the county

civil service system, as provided for by Act No. .... of the Public Acts of 1941, be adopted in the county of .....? and immediately below and on different lines shall be printed the word "yes" and the word "no."

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.404

### 38.405 Act to become effective upon adoption of system.

Sec. 5.

Same; results. If upon the canvass of the votes cast at such election it shall appear that the majority of the electors voting thereon shall have voted "yes," then the county civil service system shall be considered as adopted in such county, and thereupon the provisions of this act and all other acts relative to such system shall be and become operative in such county.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.405

### 38.406 County civil service commission; creation.

Sec. 6.

Civil service commission. In any county where the county civil service system shall be adopted under the provisions of this act, there shall be a civil service commission.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.406

### 38.407 Civil service commission; membership, terms, vacancies, eligibility, quorum, removal.

Sec. 7.

Same; members, term, eligibility, appointment; vacancies; removal, manner. The board of supervisors shall, at its next regular or special session, after the adoption of this act in any county, appoint, by a majority vote of the members-elect, 3 electors of the county as members of the civil service commission to take office as soon as appointed and qualified, and who shall serve for the following terms as designated in the resolution of appointment: One member for a term expiring 2 years from December 31 of that year, 1 member for a term expiring 4 years from December 31 of that year, and 1 member for a term expiring 6 years from December 31 of that year. Thereafter the board of supervisors shall biennially, at either the October or April session of that board, appoint by majority vote 1 civil service commissioner for a term of 6 years to take office on January 1 of the next year and succeed the commissioner whose term shall next expire. The commissioner whose term shall next expire shall serve as chairman of the commission. Any vacancy occurring on said commission shall be filled for the unexpired term by the board of supervisors by a majority vote of the members-elect. Each commissioner shall serve until his successor is appointed and qualified. No commissioner shall hold any other public office, except that of notary public, or be employed by the county or any other governmental agency, or any board, commission or department thereof in any other capacity. Each commissioner shall have been a resident of the county for 5 years next preceding his appointment and shall be an elector of the county. One commissioner shall be appointed from the county seat or the metropolis of the county, 1 commissioner shall be appointed from outside the county seat or metropolis, and the third member shall be appointed by reason of his knowledge of or experience in employment methods. Not more than 2 of the commissioners so appointed shall be members of the same political party. Two members of the commission shall constitute a quorum thereof. The board of supervisors by a 2/3 vote of all the members-elect may remove a commissioner during his term of office, but only after serving such commissioner with a statement in writing of the reasons for such removal, and allowing him an opportunity to be represented and publicly heard in his defense.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.407

**38.408 Compensation and expenses of commissioners.**

Sec. 8.

(1) Each commissioner shall receive annual compensation equal to not less than the highest annual compensation received by a civil service commissioner of that county in calendar year 1977 and necessary traveling expenses and mileage as may be incurred in the actual performance of his or her duties. The annual compensation shall be paid on a biweekly basis.

(2) Subject to subsection (1), the rate of compensation and expenses shall be fixed by the county board of commissioners.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.408 ;-- Am. 1951, Act 81, Eff. Sept. 28, 1951 ;-- Am. 1978, Act 45, Imd. Eff. Mar. 7, 1978

**38.409 Civil service commission; personnel director, assistants and employees; selection, compensation; contracts for services to municipalities; conditions of employment; discrimination prohibited.**

Sec. 9.

The commission shall choose by competitive examination a personnel director upon a basis of education, technical knowledge of personnel work and knowledge of county government and its operation, and such other assistants and employees as may be necessary. The personnel director, who shall also act as chief examiner, shall hold no other public office except notary public, or be employed by the county or any other governmental agency or any board, commission or department thereof in any other capacity. The compensation of the personnel director and other assistants and employees shall be fixed by the commission subject to the approval of the board of supervisors. The personnel director shall act as secretary of the commission. The commission, if authorized by the board of supervisors and subject to their approval, may contract with cities, villages, townships or school districts within the county or with an adjoining county for such use and services of its examiners, clerks, offices and facilities of the county civil service system as may be requested. The civil service commission shall provide by regulation for the hours and conditions of service, for the length and period of vacations, and for the regulation of sick leaves in the county service, and for such other matters pertaining to the carrying out of the provisions of this act. No applicant shall be required by any rule or regulation of the commission to submit photographs for the purpose of identification nor shall any such applicant be discriminated against by reason of race, color, creed or political affiliation.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.409 ;-- Am. 1959, Act 52, Eff. Mar. 19, 1960

**38.410 Division of county civil service into unclassified and classified services.**

Sec. 10.

The civil service of the county is divided into the unclassified and classified services.

(a) The unclassified service includes:

(1) Officers elected by popular vote and persons appointed to fill vacancies in those elective offices.

(2) Officers and employees for whom the state constitution of 1963 specifically directs the manner of appointment.

(3) Members of boards and commissions required by law to be appointed.

(4) A deputy or assistant in each of the elective offices, who, in the case of a vacancy in the elective office or inability of that elective officer to perform the duties of the office, would be entitled to perform the duties of the office until the vacancy is filled or the inability removed.

(5) Commissions appointed by the county board of commissioners, or by the board of county auditors, under the general law of this state.

(6) Court reporters of all courts of record, except the probate courts, shall be exempt from the classified service under this act.

(7) County health director.

(8) The chief clerk of a court of record who is required by law to be appointed by the board of auditors on recommendation of the judges of the court.

(9) The director of labor relations in the county.

(10) The building manager, county road commission.

(11) The chief of administration—prosecutor administrator of the office of prosecuting attorney.

(b) The classified service comprises all positions not specifically included by this act in the unclassified service.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.410 ;-- Am. 1959, Act 231, Eff. Mar. 19, 1960 ;-- Am. 1962, Act 99, Eff. Mar. 28, 1963 ;-- Am. 1963, Act 152, Imd. Eff. May 14, 1963 ;-- Am. 1964, Act 71, Eff. Aug. 28, 1964 ;-- Am. 1969, Act 24, Imd. Eff. July 3, 1969 ;-- Am. 1975, Act 292, Imd. Eff. Dec. 10, 1975 ;-- Am. 1978, Act 320, Imd. Eff. July 10, 1978

### 38.411 Civil service commission; meetings; rules of procedure; record of proceedings; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 11.

The commission shall hold meetings regularly, at least once a month. It shall adopt its own rules of procedure and keep a record of its proceedings. The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.411 ;-- Am. 1977, Act 200, Imd. Eff. Nov. 17, 1977

### 38.412 Civil service commission; powers and duties.

Sec. 12.

The powers and duties of the commission shall be as follows:

(a) It shall classify all the offices and positions of employment with reference to the examinations herein provided for, excepting as herein otherwise provided;

(b) Shall from time to time make, in accordance with the provisions hereof, rules adapted to carry out the purposes of this act and not inconsistent with its provisions for the examination and selection of persons to fill the offices and positions in the classified service, which are required to be filled by appointment, and for the selection of persons to be employed in the service of the county;

(c) Shall supervise the administration of the civil service rules, hold examinations thereunder from time to time, giving notice thereof, prepare and keep an eligible list of persons passing such examinations and certify the names of persons thereon to the appointing officers of the several departments;

(d) Shall, by itself or otherwise, investigate the enforcement of the provisions of this act, of its own rules and of the action of appointees in the classified service. In the course of such investigation, the commission or its authorized representative, shall have the power to administer oaths, and the commission shall have power by its subpoena, to secure, both the attendance and testimony of witnesses and the production of books and papers relevant to such investigations;

(e) Shall provide, through the purchasing department of the county, all needed supplies for the use of the commission;

(f) The classification shall be subdivided into groups and shall be based upon, and graded according to the duties and responsibilities of such positions, and shall be so arranged as to permit the filling of the higher grades through promotion. All salaries shall be uniform for like service in each grade of the classified service as the same shall be classified and standardized by the commission. Such classification and standardization of salaries shall not be final until approved by the board of supervisors, and such salaries shall not be paid except in accordance with such classification and standardization;

(g) Shall have such other powers and perform such other duties as may be necessary to carry out the provisions hereof.

It shall prepare and hold open competitive examinations in order to test the relative fitness of all applicants for appointment to the classified service. At least 2 weeks' notice shall be given of all such examinations.

It shall cause to be kept in each department and division thereof, records of the service of each employee, known as "service records". These records shall contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work.

It shall keep a roster of the employees of the county, together with a record of service, military or naval experience and such other matters as may have a bearing on promotion, transfer or discharge. All such "service records" and employees' records shall be confidential and not open for public inspection.

Anything in this act to the contrary notwithstanding, the commission, upon the recommendation of the appointing authority, may grant regular status in the class of common laborer to any employee who has completed at least 12 months continuous satisfactory employment in the county service as a provisional laborer in accordance with such rules and regulations as shall be established by the commission.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.412 ;-- Am. 1951, Act 81, Eff. Sept. 28, 1951 ;-- Am. 1961, Act 96, Eff. Sept. 8, 1961

### 38.412a Providing or possessing copy of classified service examination or answers prohibited; violation; penalties; complaint; issuance of arrest warrant.

Sec. 12a.

(1) A member or employee of a county civil service commission or an officer or employee of a county which has adopted this act, being Act No. 370 of the Public Acts of 1941, shall not provide a copy of the examination given to applicants for appointments to the classified service pursuant to section 12 or a copy of the answers to the examination to an applicant or other person who is not a member or employee of the county civil service commission before the examination is held. A member or employee of a county civil service commission or an officer or employee of a county which has adopted this act who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both, and shall not be eligible to be elected or appointed to any elective or appointive office of this state or a political subdivision of this state for a period of 20 years after conviction for a violation of this subsection.

(2) An applicant for appointment to the classified service shall not possess a copy of the examination given to applicants for appointment to the classified service pursuant to section 12 or the answers to the examination, prior to the time the examination is given. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00, or both.

(3) If the attorney general or the prosecutor for a county which has adopted this act fails to take action under this section, an individual may make a complaint in writing and under oath to a magistrate alleging that a person has violated this section. If, after examination of the complainant and any witnesses who may be produced, the magistrate determines that there is probable cause to believe that the person named in the complaint has violated this section, the magistrate shall issue a warrant for that person's arrest.

**History:** Add. 1982, Act 517, Eff. Mar. 30, 1983

### 38.413 Classified civil service; appointments, probationary period, temporary appointments; war veterans.

Sec. 13.

Whenever a position in the competitive classified civil service is to be filled, the appointing authority shall notify the commission of that fact, and the commission shall certify the names and addresses of the 3 candidates standing highest on the eligible list for the class or grade to which such position belongs, and the appointing authority shall forthwith appoint to such position one of the 3 persons so certified. Such appointment shall be for a probationary period to be fixed by the rules, but not to exceed 6 months. At or before the expiration of the probationary period, the appointing officer may, by presenting specific reasons for such action in writing, discharge a probational appointee, or, with the approval of the civil service commission, transfer him to another department. If not discharged prior to the expiration of the period of probation and if no complaint has been made as to the service rendered, the appointment shall be deemed complete. To prevent the stoppage of business or to meet extraordinary conditions or emergencies, the head of any department or office, may with the approval of the commission, make a temporary appointment to remain for not exceeding 60 days, or until regular appointment under the provisions hereof can be made.

War veterans shall have 10 points added to their earned ratings who have an honorable discharge from any branch of the armed forces in time of war, and 15 points shall be added to the earned ratings of all honorably discharged veterans who have served in time of war and have a service connected disability if all other requirements of this act have been complied with by such war veterans.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.412 ;-- Am. 1961, Act 96, Eff. Sept. 8, 1961

### 38.413a Classified civil service; provisional status made regular, exceptions.

Sec. 13a.

Any county employee in the classified service who has held a provisional appointment or provisional promotion continuously in the same class and agency for a period of 6 months as of July 1, 1968, shall be granted regular status in the class of positions in which such provisional appointment or provisional promotion is held. This section shall not pertain to any deputy sheriffs who hold such provisional appointments or provisional promotions, to any employees who are not citizens of the United States, to any employees holding provisional appointments in the class of common laborer nor to any employees holding seasonal appointments.

**History:** Add. 1968, Act 188, Imd. Eff. June 21, 1968

### 38.414 Classified civil service; qualifying and competitive examinations required; exceptions.

Sec. 14.

The classified service shall comprise all employees of the probate court, including the reporters employed thereby, deputy sheriffs, assistant prosecuting attorneys excepting the chief assistant prosecuting attorney, the chief trial attorney and the chiefs of the appellate division, civil division and criminal division and all positions not specifically included by this act in the unclassified service. All appointive officers and employees of the county or any subdivision thereof at the time this act shall take effect, and who shall have been such for more than 2 years prior thereto, whose positions this act includes in the classified civil service, shall hold their positions without examination until discharged, reduced, promoted or transferred, in accordance with the provisions of this act relating to civil service. All appointive officers and employees of the county or any subdivision thereof included in the classified civil service by this act who shall have been so employed for more than 1 year and less than 2 years prior to the time this act shall take effect shall be required to take qualifying examinations and all such appointive officers and employees who shall have been so employed for less than 1 year prior to the effective date of this act shall be required to take competitive examinations. Whenever the positions of any appointive officers or employees of the county shall be placed in the classified civil service of the county by amendment of this act subsequent to the time this act originally became effective in such county, such officers or employees shall hold their positions without examination until discharged, reduced, promoted or transferred in accordance with the provisions of this act, if they had been so employed for more than 2 years prior to the time their positions were so placed in the

classified civil service, and such officers or employees shall be required to take qualifying examinations if they had been so employed for less than 2 years prior to the time their positions were so placed in the classified civil service. All employees now authorized by law to be employed in any county office or department for seasonal or temporary employment, who shall have been in such employment of the county for 2 successive seasons immediately prior to the time this act shall take effect, shall be included in the classified civil service and be eligible for appointment to such seasonal or temporary occupation without examination.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.414 ;-- Am. 1949, Act 147, Imd. Eff. May 24, 1949 ;-- Am. 1962, Act 99, Eff. Mar. 28, 1963 ;-- Am. 1963, Act 64, Eff. Sept. 6, 1963

**38.415 Classified civil service; vacancies, promotion, basis.**

Sec. 15.

Whenever possible, vacancies shall be filled by promotion. Promotion shall be made from among employees qualified by training and experience to fill the vacancy, and whose length of service entitles them to consideration. The commission shall, for the purpose of promotion, rate such employees so qualified on the basis of their service record if maintained, experience in the work involved in the vacant position, training and qualification for such work, seniority and war service ratings. Seniority shall be controlling only when other factors are equal. Only 1 name, the highest on the list of ratings, shall be certified. The appointing authority shall then appoint the person so qualified forthwith, or elect to make an original appointment, in which event the procedure for original appointments hereinbefore provided shall be followed.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.415 ;-- Am. 1951, Act 81, Eff. Sept. 28, 1951 ;-- Am. 1957, Act 241, Eff. Sept. 27, 1957

**38.416 Classified civil service; removal, suspension or reduction, procedure; appeal, hearing; findings of civil service commission.**

Sec. 16.

Any officer or employee in the classified civil service may be removed, suspended or reduced in rank or compensation by the appointing authority, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. The order shall be filed with the civil service commission and a copy thereof shall be furnished to the person to be removed, suspended, or reduced. The employee may reply in writing to the order within 5 days from the date of filing the order with the civil service commission. Any person removed, suspended, or reduced in rank or compensation, within 20 days after presentation to him of the order of removal, suspension, or reduction, may appeal to the civil service commission from such order. The commission within 2 weeks from the filing of the appeal, shall commence the hearing thereon, and shall thereupon fully hear and determine the matter, and either affirm, modify or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and to have counsel and a public hearing. The finding and decision of the commission shall be certified to the official from whose order the appeal is taken, and shall forthwith be enforced and followed by him. If the order of the appointing authority is affirmed by the commission, the effective date of the order shall stand as issued by the appointing authority. If the order of the appointing authority is modified by the commission, compensation and other benefits shall be in accordance with and in proportion to the extent of such modification. If the order of the appointing authority is revoked by the commission, all compensation and other benefits which would have accrued to the employee from the effective date of the order shall be restored to him.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.416 ;-- Am. 1961, Act 96, Eff. Sept. 8, 1961

**38.417 Civil service commission; annual report to board of supervisors.**

Sec. 17.

The commission shall make an annual report to the board of supervisors at its October session each year, or at any other time as may be required by said board of supervisors.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.417

**38.418 Payrolls; approval by civil service commission.**

Sec. 18.

All payrolls shall be approved by the civil service commission, or by its secretary when so authorized by the commission, before payment.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.418

**38.419 Civil service employees; soliciting for political purposes prohibited.**

Sec. 19.

Politics, unlawful solicitation. No officer or employee of the county in the classified civil service, shall directly or indirectly make, solicit, or receive, or be in any manner concerned in making, soliciting or receiving any assessment, subscription, or contribution for any political party or any political purpose whatsoever. Any employee violating the provisions of this section may be removed from the office.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.419

**38.420 Civil service commission; powers of investigation.**

Sec. 20.

Commission, investigation powers. The commission, for the purpose of carrying into effect the civil service provisions of this act, shall have power to investigate the conduct and operation of any department or board, and to subpoena and require the attendance of witnesses and the production of books and papers, and to administer oaths.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.420

**38.421 Civil service commission; authority to require medical examinations.**

Sec. 21.

The commission shall have power and authority to call upon the services of county physicians or medical examiners to make such medical examinations as may be required by the commission.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.421

### 38.422 Civil service commission; power to subpoena witnesses and evidence; noncompliance, penalty; enforcement.

Sec. 22.

Subpoena, failure to comply, penalty, fees; circuit court summoning witnesses; perjury. Any person who shall be served with a subpoena to appear and testify, or to produce books and papers issued by the commission or by any commissioner, or by any authorized representative of the commission, in the course of the investigation conducted under the provisions of this chapter, and who shall refuse or neglect to appear or to testify as commanded in such subpoena, shall be guilty of a misdemeanor, and shall, on conviction, be punished as herein provided. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses in the circuit court for the county, and shall be paid from the appropriation for the expenses of the commission. The judge of the circuit court, either in term or vacation, upon application of any such commissioner, shall compel the attendance of witnesses, the production of books and papers and giving of testimony before the commission or before any commissioner, or authorized representative, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. Every person who, having taken an oath or made affirmation in such proceeding, shall swear or affirm wilfully, corruptly, or falsely, shall upon conviction be deemed guilty of a misdemeanor.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.422

### 38.423 Violations; penalties.

Sec. 23.

(1) Except as provided in section 12a and subsections (2) and (3), a person who knowingly violates this act, and a person who neglects or refuses to perform a duty required of the person, shall be guilty of a misdemeanor. When an act or duty is required to be done by or under the supervision or authority of an officer, and the act or duty is not done or performed, the officer who wilfully neglected to perform the duty, or wilfully permitted the omission or nonperformance of the duty or act, shall be guilty of a misdemeanor. A person who is convicted of a misdemeanor under this act, shall be punished by a fine of not less than $50.00, nor more than $500.00, or by imprisonment for not more than 90 days, or both.

(2) A person who intentionally violates this act with regard to the holding of a meeting as required in section 11 shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, for violations of that act.

(3) A person who arbitrarily and capriciously violates this act with regard to a writing prepared, owned, used, in the possession of, or retained by the commission as required under section 11 shall be subject to the penalties prescribed in Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws, for violations of that act.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.423 ;-- Am. 1977, Act 200, Imd. Eff. Nov. 17, 1977 ;-- Am. 1982, Act 517, Eff. Mar. 30, 1983

### 38.424 Classified civil service; discrimination prohibited.

Sec. 24.

Discrimination prohibited. No person in the classified civil service or seeking admission thereto, shall be appointed, reduced or removed, or in any way favored or discriminated against because of his political, racial, or

religious opinions or affiliations, except for membership in any organization which has advocated or does advocate disloyalty to the government of the United States or any subdivision thereof.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.424

### 38.425 Civil service commission; offices.

Sec. 25.

Rooms and accommodations. The commission shall be provided with suitable offices, examination rooms, and accommodations for itself and staff, as may be required to suit the public convenience and carry on the work of the commission.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.425

### 38.426 Board of supervisors; appropriations.

Sec. 26.

Appropriation. The board of supervisors shall provide the necessary appropriations to carry out the provisions of this act.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.426

### 38.427 Scope of act.

Sec. 27.

Scope. All the provisions of this act shall apply to the employees of all boards, commissions and departments of any county in which this act shall be adopted. When adopted in any county, the provisions of this act shall also apply to boards, commissions, or departments of the county constituted by law a body corporate. Any such board, commission, or department of the county constituted by law a body corporate shall be considered as a separate entity in the application of the provisions of this act, and the service of such body corporate shall be separately classified and treated with regard to appointments, promotions and removals, and service records and ratings.

**History:** 1941, Act 370, Eff. Jan. 10, 1942 ;-- CL 1948, 38.427

### 38.428 Civil service commission; determination of employee status on consolidation of governmental units with county department; subsequent change.

Sec. 28.

Any other provisions of this act to the contrary notwithstanding, in the event of the consolidation of functions or departments of another governmental unit with a county department now, or which may hereafter be established, the civil service commission of the county shall make equitable rules and regulations governing the employment, status and all other terms and conditions of employment of employees of the other governmental unit in order to

effect an orderly transfer of the employees to the county service and to provide, as near as may be practicable, the same conditions of employment as other county employees in like categories. The rules shall provide that the initial county status and county classification of the employees shall be based upon the status, duties and responsibilities exercised immediately preceding the date of consolidation. Any subsequent changes in status or classification shall be made in accordance with the rules of the county civil service commission.

**History:** Add. 1959, Act 265, Imd. Eff. Sept. 4, 1959
**Former Law:** See section 28 of Act 370 of 1941, which was repealed by Act 267 of 1945.

## TOWNSHIP CIVIL SERVICE SYSTEM

### Act 246 of 1965

AN ACT to establish and provide a civil service system in certain townships; to create a civil service commission, and to prescribe the duties thereof; to provide certain exemptions from and classifications in civil service; to prescribe penalties for the violation of the provisions of this act; and to prescribe the manner of adoption of this act by townships.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

*The People of the State of Michigan enact:*

### 38.451 Township civil service system; adoption by referendum.

Sec. 1.

Upon the adoption of a resolution therefor by a majority vote of the members elect of the township board of any township, and the subsequent approval by a majority of the township electors voting thereon, the provisions of this act shall apply in any township now or hereafter having a population of 60,000 or more. The township board may submit the question at any regular election or special election called for some other purpose, and shall submit the question at any such election held not less than 60 days after the filing with the township clerk of petitions for such submission signed by at least 4% of the registered electors of the township.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.451a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 1a.

A petition under section 1, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

**History:** Add. 1998, Act 198, Eff. Mar. 23, 1999

### 38.452 Township civil service commission; creation.

Sec. 2.

In any township where the township civil service system is adopted, there shall be a civil service commission.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

**38.453 Township civil service commission; membership, terms, vacancies, eligibility, quorum, removal.**

Sec. 3.

The township board, at its next regular or special session after the adoption of this act in any township, shall appoint, by a majority vote of the members elect, 3 electors of the township as members of the civil service commission, to take office as soon as appointed and qualified, and who shall serve for the following terms as designated in the resolution of appointment: One member for a term expiring 2 years from December 31 of that year, 1 member for a term expiring 4 years from December 31 of that year, and 1 member for a term expiring 6 years from December 31 of that year. Biennially thereafter, the township board shall appoint by majority vote 1 civil service commissioner for a term of 6 years to take office on January 1 of the next year and succeed the commissioner whose term shall next expire. The commissioner whose term shall next expire shall serve as chairman of the commission. Any vacancy occurring on the commission shall be filled for the unexpired term by the township board by a majority vote of the members elect. Each commissioner shall serve until his successor is appointed and qualified. Not more than 2 of the commissioners so appointed shall be members of the same political party. Two members of the commission constitute a quorum thereof. The township board by a 2/3 vote of all the members elect may remove a commissioner during his term of office, but only after serving the commissioner with a statement in writing of the reasons for such removal, and allowing him an opportunity to be represented and publicly heard in his defense.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

**38.454 Civil service commission; members, compensation and expenses.**

Sec. 4.

Each commissioner shall receive $10.00 compensation for each day's service for not to exceed 25 days in any one year, and such necessary traveling expenses and mileage as may be incurred in the actual performance of his duties; such compensation and expenses to be fixed by the township board. For the first 2 years after the adoption of the civil service system, compensation may be paid for not to exceed 50 days' service in any one year.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

**38.455 Civil service commission; personnel director, assistants and employees; selection, compensation; contracts for services; conditions of employment; discrimination prohibited.**

Sec. 5.

The commission shall choose by competitive examination a personnel director upon a basis of education, technical knowledge of personnel work, and knowledge of township government and its operation, and such other assistants and employees as may be necessary. The compensation of the personnel director and other assistants and employees shall be fixed by the commission subject to the approval of the township board. The personnel director shall act as secretary of the commission. The civil service commission of any township, if authorized by the township board and subject to its approval, may contract with a county, city or another township for the use and

services of its examiners, clerks and offices and all the facilities of the civil service system. The civil service commission shall provide by regulation for the hours and conditions of service, for the length and period of vacations, and for the regulation of sick leaves in the township service, and for such other matters pertaining to the carrying out of the provisions of this act. No applicant shall be required by any rule or regulation of the commission to submit photographs for the purpose of identification, nor shall any such applicant be discriminated against by reason of race, color, creed or political affiliation.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

**38.456 Civil service classification.**

Sec. 6.

The civil service of the township is hereby divided into the unclassified and classified services.

(a) The unclassified service shall include officers elected by popular vote and persons appointed to fill vacancies in such elective offices, 1 deputy or assistant each for the supervisor, clerk and treasurer, and heads of departments.

(b) The classified service shall comprise all positions not specifically included by this act in the unclassified service.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

**38.457 Civil service commission; regular meetings; rules of procedure; record of proceedings; conducting business at public meeting; notice of meeting; availability of certain writings to public.**

Sec. 7.

(1) The commission shall hold a regular meeting at least quarterly. The commission shall hold a special meeting at the request of a commissioner. The commission shall adopt its own rules of procedure and shall keep a record of its proceedings.

(2) The business that the commission performs shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(3) Except for the records listed in section 8(i), a writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1965, Act 246, Eff. Mar. 31, 1966 ;-- Am. 1977, Act 212, Imd. Eff. Nov. 17, 1977 ;-- Am. 1995, Act 64, Imd. Eff. May 31, 1995

**38.458 Civil service commission; powers and duties.**

Sec. 8.

The commission shall:

(a) Classify all the offices and positions of employment within the classified service. The classification shall be subdivided into groups and shall be based upon and graded according to the duties and responsibilities of the positions, and shall be so arranged as to permit the filling of the higher grades through promotion. All salaries shall be uniform for like service in each grade of the classified service as the same shall be classified and standardized by the commission. The classification and standardization of salaries shall not be final until approved by the township

board, and salaries shall not be paid except in accordance with the classification and standardization.

(b) From time to time make, in accordance with the provisions of this act, rules adopted to carry out the purposes of this act and not inconsistent with its provisions for the examination and selection of persons to fill the offices and positions in the classified service which are required to be filled by appointment, and for the selection of persons to be employed in the service of the township.

(c) Supervise the administration of the civil service rules, hold examinations thereunder from time to time, giving notice thereof, prepare and keep an eligible list of persons passing such examinations and certify the names of persons thereon to the appointing officers of the several departments.

(d) By itself or otherwise, investigate the enforcement of the provisions of this act, of its own rules and of the action of appointees in the classified service. In the course of such investigation, the commission or its authorized representative may administer oaths, and the commission by its subpoena may secure both the attendance and testimony of witnesses and the production of books and papers relevant to the investigation.

(e) Provide, through the purchasing department of the township, all needed supplies for the use of the commission.

(f) Such other powers and perform such other duties as may be necessary to carry out the provisions of this act.

(g) Prepare and hold open competitive examinations in order to test the relative fitness of all applicants for appointment to the classified service. At least 2 weeks' notice shall be given of all examinations.

(h) Cause to be kept in each department and division thereof, records of the service of each employee, known as "service records". These records shall contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work.

(i) Keep a roster of the employees of the township, together with a record of service, military or naval experience, and such other matters as may have a bearing on promotion, transfer or discharge. All such "service records" and employees' records shall be confidential and not open for public inspection.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.459 Classified civil service; appointments, probationary period, temporary appointments.

Sec. 9.

Whenever a position in the competitive classified civil service is to be filled, the appointing authority shall notify the commission of that fact, and the commission shall certify the names and addresses of the 3 candidates standing highest on the eligible list for the class or grade to which the position belongs, and the appointing authority shall forthwith appoint to the position 1 of the 3 persons so certified. The appointment shall be for a probationary period to be fixed by the rules, but not to exceed 6 months. At or before the expiration of the probationary period, the appointing officer, by presenting specific reasons for such action in writing, may discharge a probational appointee, or, with the approval of the civil service commission, transfer him to another department. If not discharged prior to the expiration of the period of probation and if no complaint has been made as to the service rendered, the appointment shall be deemed complete. To prevent the stoppage of business or to meet extraordinary conditions or emergencies, the head of any department or office, with the approval of the commission, may make a temporary appointment to remain for not exceeding 60 days, and only until regular appointment under the provisions of this act can be made.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.460 Classified civil service; qualifying and competitive examinations required; exceptions.

Sec. 10.

All appointive officers and employees of the township or any department thereof at the time this act takes effect, and who have been such for more than 2 years prior thereto, whose positions are included in the classified civil service, shall hold their positions without examination until discharged, reduced, promoted or transferred, in accordance with the provisions of this act. All appointive officers and employees of the township or any department thereof included in the classified civil service by this act, who shall have been so employed for more than 1 year and

less than 2 years prior to the time this act takes effect, shall be required to take qualifying examinations, and all such appointive officers and employees who shall have been so employed for less than 1 year prior to the effective date of this act shall be required to take competitive examinations. All employees now authorized by law to be employed in any township office or department for seasonal or temporary employment, who have been in such employment of the township for 2 successive seasons immediately prior to the time this act takes effect, shall be included in the classified civil service and be eligible for appointment to such seasonal or temporary occupation without examination.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.461 Classified civil service; vacancies, promotion, basis.

Sec. 11.

Wherever possible, vacancies shall be filled by promotion. Promotion shall be made from among employees, in the grades nearest below the grade in which the vacancy exists, qualified by training and experience to fill the vacancy and whose length of service in such lower grade entitles them to consideration. The commission, for the purpose of promotion, shall rate the qualified employees in the lower grades on the basis of their service record, experience in the work involved in the vacant position, training and qualification for such work, seniority and war service ratings. Seniority shall be controlling only when other factors are equal.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.462 Classified civil service; removal, suspension or reduction in rank; procedure; appeal, hearing; findings of civil service commission.

Sec. 12.

Any officer or employee in the classified civil service may be removed, suspended or reduced in rank or compensation by the appointing authority after appointment or promotion is complete by an order in writing, stating specifically the reasons therefor. The order shall be filed with the civil service commission and a copy thereof shall be furnished to the person to be removed, suspended or reduced. The employee may reply in writing to the order within 5 days from the date of filing it with the civil service commission. Any person removed, suspended or reduced in rank or compensation, within 10 days after presentation to him of the order of removal, suspension or reduction, may appeal to the civil service commission. The commission, within 2 weeks from the filing of the appeal, shall commence the hearing thereon, and shall thereupon fully hear and determine the matter, and either affirm, modify or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and to have counsel and a public hearing. The finding and decision of the commission shall be certified to the official from whose order the appeal is taken, and shall forthwith be enforced and followed by him, but under no condition shall the employee be removed, suspended or reduced in rank until the finding and decision of the commission is so certified.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.463 Civil service commission; annual report to township board.

Sec. 13.

The commission shall make an annual report to the township board at its annual meeting each year, or at any other time as may be required by the township board.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.464 Payrolls; approval by civil service commission.

Sec. 14.

All payrolls shall be approved by the civil service commission, or by its secretary when authorized by the commission, before payment.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.465 Civil service employees; soliciting for political purposes prohibited.

Sec. 15.

No officer or employee of the township in the classified civil service, directly or indirectly, shall make, solicit or receive, or be in any manner concerned in making, soliciting or receiving any assessment, subscription or contribution for any political party or any political purpose whatsoever. Any employee violating the provisions of this section may be removed from the office.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.466 Civil service commission; subpoena; noncompliance, penalty; enforcement.

Sec. 16.

Any person who is served with a subpoena to appear and testify, or to produce books and papers issued by the commission in the course of the investigation conducted under the provisions of this act, and who refuses or neglects to appear or to testify as commanded in the subpoena, is guilty of a misdemeanor. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses in the circuit court for the county in which the township is situated, and shall be paid from the appropriation for the expenses of the commission. The judge of the circuit court, either in term or vacation, upon application of the commission, shall compel the attendance of witnesses, the production of books and papers and giving of testimony before the commission by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before the court. Every person who, having taken an oath or made affirmation in a proceeding, swears or affirms wilfully, corruptly or falsely is guilty of a misdemeanor.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.467 Violations; penalties.

Sec. 17.

(1) Except as provided in subsections (2) and (3), a person who knowingly violates this act, and a person who neglects or refuses to perform a duty enjoined upon the person by this act, is guilty of a misdemeanor. When, by

this act, an act or duty is required to be done by or under the supervision or authority of an officer, and the act or duty is not done or performed, then the officer who has wilfully neglected to perform the duty, or has wilfully permitted the omission or nonperformance of the duty or act, is guilty of a misdemeanor. A person convicted of an act or omission which is by this act declared to be a misdemeanor, except as provided in subsection (2) or (3), shall be fined not less than $50.00 and not more than $100.00, or be imprisoned for not more than 90 days, or both.

(2) A member of the board who intentionally violates section 7(2) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976.

(3) If the board arbitrarily and capriciously violates section 7(3), the board shall be subject to the penalties prescribed in Act No. 442 of the Public Acts of 1976.

**History:** 1965, Act 246, Eff. Mar. 31, 1966 ;-- Am. 1977, Act 212, Imd. Eff. Nov. 17, 1977

### 38.468 Classified civil service; discrimination prohibited.

Sec. 18.

No person in the classified civil service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of his political, racial or religious opinions or affiliations, except for membership in any organization which has advocated or does advocate disloyalty to the government of the United States or any subdivision thereof.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.469 Civil service commission; offices.

Sec. 19.

The commission shall be provided with suitable offices, examination rooms, and accommodations for itself and staff, as may be required to suit the public convenience and carry on the work of the commission.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

### 38.470 Township board; appropriations.

Sec. 20.

The township board shall provide the necessary appropriations to carry out the provisions of this act.

**History:** 1965, Act 246, Eff. Mar. 31, 1966

## FIREMEN AND POLICEMEN CIVIL SERVICE SYSTEM

## Act 78 of 1935

AN ACT to establish and provide a board of civil service commissioners in cities, villages, and municipalities having full-time paid members in the fire or police departments, or both; to provide a civil service system based upon examination and investigation as to merit, efficiency, and fitness for appointment, employment, and promotion of all

full-time paid members appointed in the fire and police departments and respective cities, villages, and municipalities; to regulate the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986 ;-- Am. 1998, Act 199, Eff. Mar. 23, 1999
**Popular Name:** Police and Fire Civil Service Act

*The People of the State of Michigan enact:*

### 38.501 Fire and police department civil service commissions; creation.

Sec. 1.

Within 30 days after this act shall take effect there may be created a civil service commission in each city, village or municipality of any population whatsoever having a fire and/or police department, any of the members of which are full paid by said city, village or municipality.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.501
**Popular Name:** Police and Fire Civil Service Act

### 38.502 Civil service commission; membership, appointment, terms; election of president.

Sec. 2.

The civil service commission shall consist of 3 members, 1 of whom shall be appointed by the principal elected officer of the city, village or municipality with the approval of the legislative body; and he shall serve for a period of 6 years from the date of his appointment. The second member of the commission shall be selected by the paid members of the fire and/or police department and he shall serve for a period of 4 years from the date of his appointment; a majority vote of the members of the fire and/or police department shall be necessary to select such member. The third member of the commission shall be selected by the aforesaid members of the commission and he shall serve for a period of 2 years from the date of his appointment. Thereafter all appointments shall be made for a period of 6 years each; each commissioner to serve until his successor is appointed and qualified by the appointing power hereinbefore designated.

The 3 members of the commission shall together elect 1 of their number to act as president of the commission, who shall serve for 1 year. Each year thereafter the commissioners shall elect 1 of their number, president, the member so elected to serve 1 year.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.502 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951 ;-- Am. 1957, Act 43, Eff. Sept. 27, 1957
**Popular Name:** Police and Fire Civil Service Act

### 38.503 Civil service commission; members, qualifications.

Sec. 3.

No person shall be appointed a member of said commission who is not a citizen of the United States and who has not been a resident of said city, village or municipality for a period of 1 year and an elector of said county for a period of at least 3 years immediately preceding such appointment. No commissioner shall hold any other elective office, place or position under the United States, state of Michigan, or any city, county or other political subdivision thereof; nor shall any commissioner serve on any political committee or take any active part in the management of

any political campaign. Not more than 2 of the said commissioners, at any 1 time, shall be adherents of the same political party.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.503 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949
**Popular Name:** Police and Fire Civil Service Act

### 38.504 Civil service commission; vacancies, removal, petition, hearing.

Sec. 4.

In event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, removal or other cause, a new commissioner shall be appointed to fill out the unexpired term of said commissioner within 10 days after said commissioner shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission. The mayor or principal executive officer shall at any time remove any commissioner for incompetency, dereliction of duty, malfeasance in office or any other good cause, which shall be stated in writing and made a part of the records of the commission, and a copy of the removal shall be served on said commissioner forthwith: Provided, however, That once the mayor or principal executive officer has to remove any commissioner, such removal shall be temporary only and shall be in effect for a period of 10 days. If at the end of said period of 10 days the said commissioner shall fail to make answer thereto, he shall be deemed removed, otherwise the mayor shall file in the office of the clerk of the circuit court of said county a petition setting forth in full the reason for said removal and praying for the confirmation by said circuit court of the action of the mayor in so removing the said commissioner. A copy of said petition, in writing, shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of the said court and shall be heard by said court as soon as the removed commissioner shall demand. All rights hereby vested in said circuit court may be exercised by the judge thereof during a vacation. In event that no term of court is being held at the time of filing of said petition, and the judge thereof cannot be reached in the county wherein the petition was filed, said petition shall be heard at the next succeeding term of said circuit court, whether regular or special, and the commissioner so suspended shall remain suspended until a hearing is had upon the petition of the mayor. The court, or the judge thereof, in vacation, shall hear and decide upon said petition. The contestant, against whom the decision of the court or judge thereof, in vacation, shall be rendered, shall have the right of appearing in person and by counsel and presenting his defense and to petition the supreme court for a review of the decision of the circuit court, or the judge thereof in vacation, as in chancery cases. In event that the mayor shall fail to file this petition in the office of the clerk of the circuit court, as hereinbefore provided, within 10 days after the removal of said commissioner, such commissioner shall immediately resume his position as a member of the civil service commission.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.504 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949
**Popular Name:** Police and Fire Civil Service Act

### 38.505 Civil service commission; clerk.

Sec. 5.

The city clerk or city recorder of any city, village or municipality under the terms of this act shall "ex officio" be clerk of the civil service commission and shall supply to the commission without extra compensation all necessary clerical and stenographic services for the work of the civil service commission.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.505
**Popular Name:** Police and Fire Civil Service Act

### 38.506 Fire and police civil service; eligibility for permanent appointment.

Sec. 6.

For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this act, all persons holding a position in the fire and/or police department, including the chief thereof, when this act takes effect, who shall have served in such position for a period of at least 6 months last past continuously, are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation: Provided, however, That any employee with less than 6 months' service shall be classed as probationer under this act.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.506 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951
**Popular Name:** Police and Fire Civil Service Act

### 38.507 Appointments and promotions; competitive examinations; provisions applicable to appointment, reinstatement, promotion, or discharge; applicability of section.

Sec. 7.

Appointments to and promotions in all paid fire or police departments, or both of cities, villages, and municipalities shall be made only according to qualifications and fitness to be ascertained by competitive examinations, and no person shall be appointed, reinstated, promoted, or discharged as a full-time paid member of a department, regardless of rank or position, in any fire or police department of any city, village, or municipality in this state except as provided in this act. This section applies only to full-time paid members as defined in section 17.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.507 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

### 38.508 Civil service commission; assistance by municipal executive officers; printing, supplies.

Sec. 8.

It shall be the duty of the mayor, or principal executive officer, and heads of departments of every city, village or municipality to aid the civil service commission in all proper ways in carrying out the provisions of this act, and to allow the reasonable use of public buildings and to cause suitable and convenient rooms and accommodations to be assigned and provided, and to be furnished, heated and lighted for carrying on the work and examinations of the civil service commission and in all proper ways to facilitate the same. The civil service commission may order from the proper authorities the necessary stationery, postage stamps, official seal and other articles to be supplied, and the necessary printing to be done, for its official use.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.508
**Popular Name:** Police and Fire Civil Service Act

### 38.509 Civil service commission; powers and duties.

Sec. 9.

The civil service commission in each city, village or municipality, within the terms of this act, shall

First, Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this act. All rules so prepared may, from time to time, be added to, amended or rescinded.

Second, Keep minutes of its own proceedings and records of its examinations and other official actions. All recommendations of applicants for office, received by the said commission or by any officer having authority to make appointments to office, shall be kept and preserved for a period of 10 years, and all such records, recommendations of former employers accepted, and all written causes of removal, filed with it, shall, subject to reasonable regulation, be open to public inspection. It shall keep a roster of the members of the fire and police department, together with a record of service, military or naval experience, file statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work and such other matters as may have a bearing on promotion, transfer or discharge.

Third, Make investigations, either sitting in a body or through a single commissioner, concerning all matters touching the enforcement and effect of the provisions of this act, and the rules and regulations prescribed thereunder, concerning the action of any examiner or subordinate of the commission, or any person in the public service in respect to the execution of this act; and, in the course of such investigations, each commissioner shall have the power to administer oaths and affirmations, and to take testimony.

Fourth, Have power to subpoena and require the attendance of witnesses, and the production thereby of books and papers pertinent to the investigations and inquiries hereby authorized, and to examine them and such public records as it shall require, in relation to any matter which it has the authority to investigate. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the circuit courts, and shall be paid from the appropriations for the incidental expenses of the commission. All officers in the public service, and their deputies, clerks, subordinates and employees shall attend and testify when required to do so by said commission. Any disobedience to, or neglect of, any subpoena issued by the said commissioners, or any 1 of them, to any person, shall be held a contempt of court, and shall be punished by the circuit court, within the county in which the said subpoena has been issued. Any judge of any of said courts shall, upon the application of any 1 of said commissioners, in such cases cause the process of said court to issue to compel such person or persons, disobeying or neglecting any such subpoena, to appear and to give testimony before the said commissioners; any 1 of them shall have power to punish any such contempt.

Fifth, Make an annual report to the mayor or principal executive officer showing its own action, and rules and regulations, and all exceptions thereto in force, and the practical effects thereof, and any suggestions it may approve for the more effectual accomplishments of the purpose of this act. Such reports shall be available for public inspection 5 days after the same shall have been delivered to the mayor or principal executive officer of any city, village or municipality.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1941, Act 151, Eff. Jan. 10, 1942 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.509
**Popular Name:** Police and Fire Civil Service Act

## 38.510 Application for examination; filing; contents; forms; refusal to examine or certify applicant; public hearing for aggrieved applicant; review; testimony; decision; physical examination; certification; age requirement; reinstatement or reappointment; rank.

Sec. 10.

(1) The civil service commission in each city, village, or municipality shall require an individual applying for admission to an examination provided for under this act or under the rules and regulations of the commission to file in its office, within a reasonable time before the proposed examination, a formal application in which the applicant shall state under oath or affirmation all of the following:

(a) Full name, residence, and post-office address.

(b) United States citizenship.

(c) Attainment of the age of majority.

(d) Health and physical capacity for the position for which the applicant is applying.

(e) Each residence and business or place of employment for not less than the 3 previous years. The commission shall establish educational requirements, but the requirements shall not call for less than an eighth grade education. After acceptance by the civil service commission, the applicant shall be governed as to residence by the city or village charter.

(f) Other information as may reasonably and legally be requested regarding the applicant's qualifications and fitness for the position for which the applicant is applying.

(2) Blank forms for applications shall be furnished by the commission, without charge, to all individuals requesting applications. The commission may require, in connection with an application, certificates of citizens, physicians, or others having knowledge of the applicant as the good of the service requires. The commission may refuse to examine an applicant or, after examination, to certify as eligible, an applicant who falls under any of the following disqualifications:

(a) Lacks any of the established preliminary requirements for the examination or position of employment for which the applicant applied.

(b) Is so disabled as to be rendered unfit for the performance of the duties of the position to which the applicant seeks appointment.

(c) Is a habitual user of intoxicating liquors or an illegal user of 1 or more controlled substances.

(d) Has been found guilty of any felony.

(e) Has been dismissed from the public service for delinquency or misconduct.

(f) Has made a false statement of a material fact or practiced or attempted to practice a deception or fraud in the application, in the examination, or in securing eligibility.

(g) Refuses to comply with the rules and regulations of the commission.

(3) If an applicant feels aggrieved by the action of the commission in refusing to examine the applicant or, after an examination, to certify the applicant as eligible, the commission, at the request of the applicant, shall appoint a time and a place for a public hearing at which time the applicant may appear, personally or with counsel, and the commission shall then review its refusal of examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by the applicant. After review, the commission shall file the testimony taken in its records and shall again make a decision, which decision shall be final.

(4) Before appointment, all applicants for a position in the fire or police department shall undergo a physical examination, which may be performed by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner, to determine that an applicant is free from defects, deformity, or diseases that might incapacitate the applicant from the performance of the duties of the position desired. Applications will not be accepted if the person applying has not attained the age of majority under state law. If an applicant has formerly served upon the fire or police department of the city, village, or municipality to which application is made and has resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant, within a period of 2 years next preceding the date of the application, and is a resident of the city, village, or municipality or the area authorized by city charter, then the applicant shall be eligible for reinstatement at the discretion of a civil service commission. The applicant, providing the former term of service justifies, may be reappointed to the fire or police department without examination other than a physical examination. If an applicant is reinstated to the fire or police department, the applicant shall be the lowest in rank in the department next above the probationers of the department. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.510 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949 ;-- Am. 1956, Act 162, Eff. Aug. 11, 1956 ;-- Am. 1957, Act 94, Eff. Sept. 27, 1957 ;-- Am. 1966, Act 96, Eff. Mar. 10, 1967 ;-- Am. 1977, Act 12, Imd. Eff. May 11, 1977 ;-- Am. 1982, Act 419, Imd. Eff. Dec. 28, 1982 ;-- Am. 1985, Act 6, Imd. Eff. Mar. 27, 1985 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986 ;-- Am. 2004, Act 133, Imd. Eff. June 3, 2004
**Popular Name:** Police and Fire Civil Service Act

## 38.510a Repealed. 1986, Act 155, Imd. Eff. July 3, 1986.

**Compiler's Notes:** The repealed section pertained to applications for employment in certain municipalities.
**Popular Name:** Police and Fire Civil Service Act

## 38.511 Rules for examinations; minimum passing grade; notice and distribution of rules; probationary period; final appointment; hearing; procedure for filling position or vacancy; temporary appointments; special examinations; "appointing officer" defined.

Sec. 11.

(1) The civil service commission in each city, village, or municipality shall make rules providing for examinations of applicants for positions in the paid fire or police departments in each city, village, or municipality under this act, for appointments, and for such other matters as are necessary to carry out the purposes of this act. The minimum passing grade for numerically scored entry level examinations shall be at least 70. Seventy shall designate the applicant's demonstration of the minimum acceptable level of performance on the individual or cumulative selection procedures, or both. After initial appointment, the minimum passing grade for any examination shall be at least 70%. Due notice of the contents of the rules and of any modifications to the rules shall be given, by mail, in due season, to appointing officers affected thereby, and the rules and rule modifications shall be printed also for public distribution. All original appointments to any positions in a fire department, within the terms of this act, shall be for a probationary period of 6 months. All original appointments to any positions in a police department, within the terms of this act, shall be for a probationary period of 1 year after the completion of legally required courses of basic training. At any time during the probationary period, an appointee may be dismissed for cause, in the manner provided in this act. If at the close of this probationary term the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified within 10 days, in writing, that he or she will not receive permanent appointment, whereupon his or her employment shall cease. Otherwise, his or her retention in the service shall be equivalent to final appointment. The probationer shall be entitled to a hearing before the commission as provided in section 14.

(2) Every entry position, unless filled by reinstatement, shall be filled only in the following manner: The appointing officer shall notify the civil service commission of any vacancy in the service which he or she desires to be filled, and shall request the certification of eligibles. The commission immediately shall certify from the eligible list the names of the persons who received the highest 5 average composite scores on examinations held under the provisions of this act within a period of 2 years next preceding the date of the appointment. The appointing officer, thereupon, with sole reference to the merit and fitness of the candidates, shall make the appointment from the names certified. As each subsequent vacancy occurs, precisely the same procedure shall be followed. When an appointment is made under this section, it shall be in the first instance for the probationary period, as provided in this act.

(3) All positions, other than entry, shall be filled only in the following manner: The appointing officer shall notify the civil service commission of any vacancy in the service which he or she desires to be filled and shall request the certification of eligibles. The commission immediately shall certify from the eligible list the name of the person who received the highest average at preceding examinations held under the provisions of this act within a period of 2 years next preceding the date of the appointment. The appointing officer, thereupon, with sole reference to the merit and fitness of the candidates, shall make the appointment certified. As each subsequent vacancy occurs, precisely the same procedure shall be followed. When an appointment is made under this section, it shall be in the first instance for the probationary period, as provided in this act.

(4) Whenever there are urgent reasons for filling a vacancy in any position in the fire or police department and there is no list of persons eligible for appointment, the appointing officer may nominate a person to the civil service commission for a noncompetitive examination. If the nominee is certified by the commission as qualified, after a noncompetitive examination, he or she may be appointed temporarily to fill the vacancy until a selection and appointment can be made after a competitive examination, and in the manner prescribed in this act. However, the temporary appointment shall not continue for more than 3 months, nor shall successive temporary appointments be made to the same position. In the event of an emergency due to a war in which this country is involved, the civil service commission may make temporary appointments to fill vacancies when appointments cannot be made under the provisions of this act. These appointments shall be temporary, and only during hostilities, and for 6 months thereafter.

(5) In event any position as an electrician, mechanic, radio engineer, fire inspector, or fire alarm operator is to be filled in a paid fire or police department, then the examination to be given to applicants shall be so drawn as to test only the qualifications of the applicants in regard to their ability as an electrician, mechanic, radio engineer, fire inspector, or fire alarm operator. The examinations shall be special examinations.

(6) As used in this section, "appointing officer" means the mayor or principal administrative or executive officer in any city, village, or municipality.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1941, Act 151, Eff. Jan. 10, 1942 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.511 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949 ;-- Am. 1956, Act 162, Eff. Aug. 11, 1956 ;-- Am. 1971, Act 47, Imd. Eff. June 28, 1971 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

**38.512 Examinations; nature; contents; notice; commencement of examination for promotion; eligible list; discrimination prohibited; competitive vacancies filled by promotions; probationary period; hearing.**

Sec. 12.

(1) All examinations for positions shall be practical in their character and shall relate to those matters and shall include those inquiries as will fairly and fully test the comparative merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have fulfilled the preliminary requirements prescribed by this act. Notice of the time and place for accepting applications shall be given by the commission by publication for 2 weeks in the official paper of the city, village, or municipality, and the notice shall be posted by the commission in a conspicuous place in the office and on the bulletin boards of the city, village, or municipality for 2 weeks. Further notice may be given as the commission shall prescribe. However, a newspaper advertisement shall not be required for an examination for a promotion. The examination process shall begin within 6 months after the closing date for the acceptance of applications. However, the commission may delay or cancel the examination process for good cause. The commission shall post, in a public place at its office, the eligible list containing the names and grades of those who have passed examinations for positions or promotions in fire or police departments under this act, and shall indicate any appointments that will be made from the list. No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant; nor shall inquiries be made concerning those opinions or affiliations; and all disclosures thereof shall be discouraged. Discrimination shall not be exercised, threatened, or promised by any person in the fire or police department against or in favor of an eligible applicant or employee in fire or police departments under this act because of his or her political or religious opinions or affiliations.

(2) Vacancies in positions in the fire and police departments above the rank of fire fighter or police officer shall be competitive and shall be filled by promotions from among persons holding positions in the next lower rank in the departments who have completed 2 years in that rank and who have at least 5 years in the department. If there are more vacancies than there are persons with 5 years in the department, the commission may lower the requirements to 3 years in the department. If no person or persons have completed 2 years in the next lower rank, the commission may hold examinations among persons in such rank as to all intent and purposes as though 2 years of service had been completed by those persons. Promotions shall be based upon merit to be ascertained by tests to be provided by the civil service commission and upon the superior qualifications of the persons promoted as shown by his or her previous service and experience. In the event of only 1 person in the next lower rank, 1 or more persons in the second lower rank who have completed at least 5 years in the department may compete for the vacancy. Whenever a position becomes vacant for which examinations are held, the appointing power shall ask the commission for the name of the person eligible for appointment. The commission shall certify the name of the person highest on the eligible list at preceding examinations held under this act within a period of 2 years next preceding the date of the appointment for the class to which the vacant position has been allocated, who is willing to accept employment. If more than 1 vacancy is to be filled, an additional name shall be certified for each additional vacancy. The appointing power immediately shall appoint the person to the position. To enable the appointing power to exercise a choice in the filling of positions of promotion in the fire or police service, a promotion shall not be considered complete until after the expiration of a period of 6 months' probationary service, and if at the end of the probationary period the appointing authority finds that the conduct or capacity of the probationer has not been satisfactory, the appointing authority shall notify the probationer and the commission in writing. Otherwise, his or her retention in the higher position shall be equivalent to receiving full status and regular employment in the higher position. The probationer, upon receiving notice that his or her conduct or capacity has not been satisfactory in the higher position, may demand a written statement of particulars of reasons for that determination and may demand a hearing before the commission. The demands shall be in writing. In such a case, the probationer shall be entitled to a hearing before the commission and to a statement of particulars to be served not less than 7 days before the date of the hearing. The commission may affirm or reverse the decision of the appointing authority or may order an additional probation period not to exceed 6 months. The decision of the commission shall be final. If the probationer does not receive full status and regular employment in the higher position, he or she shall resume the duties of his or her former position, and the appointing power shall be entitled to another certification of eligibles in accordance with this act.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1941, Act 151, Eff. Jan. 10, 1942 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.512 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951 ;-- Am. 1965, Act 298, Eff. Mar. 31, 1966 ;-- Am. 1969, Act 198, Imd. Eff. Aug. 6, 1969 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

**38.513 Reduction in pay, suspension or discharge; discrimination prohibited; hearing by civil service commission.**

Sec. 13.

No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by any appointing officer for religious or political reasons or affiliations. In all cases of reductions, layoff, or suspension of an employee or subordinate, whether appointed for a definite term or otherwise the appointing authority shall furnish such employees or subordinate with a copy of reasons for layoff, reduction, or suspension and his reasons for the same, and give such employee or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission: Provided, however, That the employee or subordinate shall be entitled to a hearing before the commission as provided in section 14. Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employee or subordinate for a reasonable period, not exceeding 30 days: Provided, however, That successive suspensions shall not be allowed, and after such suspension, employees shall be entitled to a hearing as provided for in this section and in section 14: And provided further, That the provisions of this act shall not apply to temporary and exceptional appointments made under the authority of this act.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.513 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949
**Popular Name:** Police and Fire Civil Service Act

**38.514 Tenure; grounds for removal, discharge, suspension, or deprivation of privileges; cause; written statement of charges; answer; hearing; reinstatement; record of testimony; appeal; counsel; reduction of full-time paid members; new appointments.**

Sec. 14.

(1) The tenure of each person holding an office, place, position, or employment under this act shall be only during good behavior and efficient service, and any person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges by the civil service commission for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or nonfeasance in office. However, a member of any fire or police department encompassed by this act shall not be removed, discharged, reduced in rank or pay, suspended, or otherwise punished except for cause, and in no event until he or she has been furnished with a written statement of the charges and the reasons for the actions. In addition, all charges shall be void unless filed within 90 days after the date the violation occurred, except in the case of a probationer, whose violations may accumulate for the probationary period. In each case where charges have been made a copy of the statement of the reasons for the charges and the answers thereto, if the person sought to be removed desires to file a written answer, shall be furnished to the civil service commission and entered upon its records. The answer shall be filed by the member within 5 days after service of the charges upon him or her. If the person sought to be removed or reduced demands it, the civil service commission shall grant him or her a public hearing, which hearing shall be held within a period of 10 days after the filing of the charges in writing and a written answer thereto. Pending the period between the making of the charges as a basis for removal and the decision thereon by the commission, the member shall remain in office. At the hearing, the burden shall be upon the removing officer to justify his or her action. If the removing officer fails to make charges to the satisfaction of a member or members of a fire or police department in a city, village, or municipality, the member or members of the fire or police department may present the information to the civil service commission. If the civil service commission fails to justify the action of the removing officer, then the person sought to be removed shall be reinstated with full pay for the entire period during which time he or she may have been prevented from performing his or her usual employment, and no charges shall be officially recorded against his or her record. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be made available for public inspection if an appeal is not taken from the action of the commission. If the civil service commission sustains the action of the removing officer, the person removed shall have an immediate right of appeal to the circuit court of the county in which the city, village, or municipality is situated. The appeal shall be taken within 90 days after the date the civil service commission enters its final order. If an appeal is made, the circuit court shall hear the appeal upon the original record, and additional proof shall not be offered into evidence. The circuit court's decision shall be final. However,

the employee has the right to petition the supreme court for a review of the court's decision. The removing officer and the person sought to be removed at all times, both before the civil service commission and upon appeal, may employ counsel to represent either of them before the civil service commission and, upon appeal, before the circuit court.

(2) If for reasons of economy it shall be deemed necessary by any city, village, or municipality to reduce the number of full-time paid members of any fire or police department, the municipality shall follow the following procedure: Removals shall be accomplished by suspending in numerical order, commencing with the last employee appointed to the fire or police department, all recent appointees to the fire or police department until the reductions are made. However, if the fire or police department increases in numbers to the strength existing before the reductions were made, the fire fighters or police officers suspended last under this act shall be reinstated before any new appointments to the fire or police department are made.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.514 ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

### 38.515 Violation of act; misdemeanor.

Sec. 15.

Any commissioner or examiner, or, any other person, who shall wilfully, by himself or in cooperation with 1 or more persons, defeat, deceive or obstruct any person in respect to his right of examination or registration according to this act, or to any rules or regulations prescribed pursuant thereto, or who shall wilfully or corruptly, falsely, mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified, pursuant to the provisions of this act, or aid in doing so, or who shall wilfully or corruptly furnish to any person any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment of any person so examined, registered, or certified, or to be examined, registered or certified; or who shall impersonate any other person, or permit or aid in any manner any other person to impersonate him in connection with any examination or registration, or application or request to be examined or registered, shall, for each offense be deemed guilty of a misdemeanor.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.515
**Popular Name:** Police and Fire Civil Service Act

### 38.516 Violation of act; penalty.

Sec. 16.

Whoever makes an appointment to office, or selects a person for employment contrary to the provisions of this act, or wilfully refuses or neglects otherwise to comply with, or conform to, any of the provisions of this act, or violates any of such provisions, shall be deemed guilty of a misdemeanor. Misdemeanors under the provisions of this act shall be punishable by a fine of not less than $100.00, nor more than $1,000.00 or by imprisonment in state prison for a term not exceeding 2 years, or by both fine and imprisonment, in the discretion of the court.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1943, Act 173, Eff. July 30, 1943 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.516
**Popular Name:** Police and Fire Civil Service Act

### 38.517 Definitions.

Sec. 17.

As used in this act:

(a) "Appointing power" means each person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position, or employment subject to civil service.

(b) "Appointment" means selection, promotion, appointing, or employing any person to hold any office, place, or position of employment subject to civil service.

(c) "City" means a city, village, or other municipality that has a full-time paid fire or police department, or both.

(d) "Commission" means the civil service commission created by this act.

(e) "Commissioner" means any 1 of the 3 commissioners of the commission.

(f) "Examination" means any test, process, evaluation, or any other procedure used to determine a candidate's merit, suitability, or fitness for the position for which he or she is applying.

(g) "Full-time paid member" means an officer, fire fighter, or police officer who is paid regularly by the city and devotes his or her whole time to fire fighting, law enforcement, or related activities.

(h) "Municipality" means a township, charter township, city, or incorporated village.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- Am. 1945, Act 287, Imd. Eff. May 25, 1945 ;-- CL 1948, 38.517 ;-- Am. 1951, Act 15, Eff. Sept. 28, 1951 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

## 38.517a Approval of act by majority of electors; submission of question by resolution; petition; form of ballot; canvass; certification of results; effect of adoption.

Sec. 17a.

(1) This act does not affect any city, village, or municipality until approved by a majority of the electors voting thereon at an election at which the question of adoption of this act for that city, village, or municipality is properly submitted.

(2) The governing body of any city, village, or municipality, by resolution, may submit the question described in subsection (1) to the electors of the city, village, or municipality at any regular or special election. In addition, the governing body of any city, village, or municipality, by resolution, shall submit the question described in subsection (1) to the electors of the city, village, or municipality at any regular or special election on the filing of a petition requesting a submission with the governing body, which petition is signed in accordance with the provisions of the city, village, or municipal charter for referendums on ordinances. If there are no provisions in the city, village, or municipal charter governing the submission of ordinances by referendum petition, then the petition must be signed by 10% of the registered voters in the city, village, or municipality.

(3) The form of ballot shall be as follows:

"Shall Act No. 78 of the Public Acts of 1935, entitled as amended, 'An act to establish and provide a board of civil service commissioners in cities, villages, and municipalities having full-time paid members in the fire or police departments, or both; to provide a civil service system based upon examination and investigation as to merit, efficiency, and fitness for appointment, employment, and promotion of all full-time paid members appointed in the fire and police departments and respective cities, villages, and municipalities; to regulate the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers; and to repeal certain acts and parts of acts,' be adopted?

Yes ( )

No ( )."

(4) The ballots shall be cast and canvassed, and the results of the election certified in the same manner as ballots on any question submitted to the electors of the city, village, or municipality. If the majority of the qualified electors of the city, village, or municipality vote in favor of the adoption of this act, then this act shall be in full force and effect in that city, village, or municipality.

**History:** 1935, Act 78, Imd. Eff. May 24, 1935 ;-- CL 1948, 38.517a ;-- Am. 1949, Act 271, Eff. Sept. 23, 1949 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Popular Name:** Police and Fire Civil Service Act

**38.517b Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.**

Sec. 17b.

A petition under section 17a, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

**History:** Add. 1998, Act 199, Eff. Mar. 23, 1999
**Popular Name:** Police and Fire Civil Service Act

**38.518 Rescission of act by majority of electors; submission of question; form of ballot; canvass; certification of results; effect of vote in favor of rescission.**

Sec. 18.

(1) This act shall continue in full force and effect in any city, village, or municipality in which it has been properly adopted until rescinded by a majority of the electors voting thereon at an election at which the question of rescission of this act for that city, village, or municipality is properly submitted.

(2) The governing body of any city, village, or municipality, by resolution, may submit the question of rescission of this act, as it relates to the fire department or police department, or both, to the electors of that city, village, or municipality at any regular or special election.

(3) The form of ballot shall be as follows:

"Shall Act No. 78 of the Public Acts of 1935, entitled as amended, 'An act to establish and provide a board of civil service commissioners in cities, villages, and municipalities having full-time paid members in the fire or police departments, or both; to provide a civil service system based upon examination and investigation as to merit, efficiency, and fitness for appointment, employment, and promotion of all full-time paid members appointed in the fire and police departments and respective cities, villages, and municipalities; to regulate the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers; and to repeal certain acts and parts of acts,' be rescinded?

Yes ( )

No ( )."

The ballots shall be cast and canvassed, and the results of the election certified in the same manner as ballots on any question submitted to the electors of the city, village, or municipality. If the majority of the qualified electors of the city, village, or municipality vote in favor of the rescission of this act, then this act is rescinded in that city, village, or municipality.

**History:** Add. 1951, Act 88, Eff. Sept. 28, 1951 ;-- Am. 1986, Act 155, Imd. Eff. July 3, 1986
**Former Law:** See section 18 of Act 78 of 1935, which was repealed by Act 267 of 1945.
**Popular Name:** Police and Fire Civil Service Act

## POLICE CADET TRAINING PROGRAM

### Act 201 of 1970

AN ACT to authorize police cadets programs in cities, villages and townships operating under the provisions of Act No. 78 of the Public Acts of 1935, as amended.

**History:** 1970, Act 201, Imd. Eff. Aug. 25, 1970

*The People of the State of Michigan enact:*

***** 38.521 SUBSECTION (2) DOES NOT APPLY ON OR AFTER JULY 1, 1987: See (2) of 38.521 *****

**38.521 Police cadet training program; applicability of subsection (2).**

Sec. 1.

(1) A city, village, or township that has adopted the provisions of Act No. 78 of the Public Acts of 1935, as amended, being sections 38.501 to 38.518 of the Michigan Compiled Laws, may operate a police cadet training program. An applicant for enrollment in the program shall meet all the requirements of that act for a position in the police department, except that the applicant shall be not less than 18 years of age and not more than 31 years of age. A person enrolled in the program shall not fulfill any functions, other than administrative, of a police officer until he or she receives a favorable recommendation from the appointing officer to the civil service commission or to the appointing authority if there is no civil service commission. A police cadet recommended for advancement to police officer shall receive preferential consideration for the position over other applicants. A police cadet shall serve as a cadet for not more than 4 years.

(2) Notwithstanding subsection (1), any cadet who is serving as a police cadet on or after March 31, 1983 shall be entitled to serve as a cadet for not more than 8 years. This subsection shall not apply on or after July 1, 1987.

**History:** 1970, Act 201, Imd. Eff. Aug. 25, 1970 ;-- Am. 1972, Act 46, Imd. Eff. Feb. 19, 1972 ;-- Am. 1978, Act 72, Imd. Eff. Mar. 21, 1978 ;-- Am. 1983, Act 19, Imd. Eff. Mar. 31, 1983 ;-- Am. 1985, Act 72, Imd. Eff. July 1, 1985

## FIRE FIGHTERS AND POLICE OFFICERS RETIREMENT ACT

### Act 345 of 1937

AN ACT to provide for the establishment, maintenance, and administration of a system of pensions and retirements for the benefit of the personnel of fire and police departments employed by cities, villages, or municipalities having full paid members in the departments, and for the spouses and children of the members; to provide for the creation of a board of trustees to manage and operate the system; to authorize appropriations and deductions from salaries; to prescribe penalties and provide remedies; and to repeal all acts and parts of acts inconsistent therewith.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1989, Act 7, Imd. Eff. May 3, 1989 ;-- Am. 1998, Act 200, Eff. Mar. 23, 1999
**Popular Name:** Act 345

*The People of the State of Michigan enact:*

**38.551 Fire and police department pension and retirement system; retirement board, members, election, appointment, terms.**

Sec. 1.

The retirement board, also referred to in this act as the pension board, created hereunder shall be known as "The retirement board" and shall be a corporate body, consisting of 5 members, which shall consist of:

(1) The treasurer of the city, village or municipality, so affected hereby.

(2) Two additional members, 1 of whom shall be an active member of and elected by a majority vote of the members of the fire department, and 1 of whom shall be an active member of and elected by a majority vote of the members of the police department under such rules and regulations as the retirement board shall adopt to govern such election. Each such member shall serve for a term of 4 years, except that in the first instance, the member elected by the police department shall serve for a term of 2 years. If in the first instance only the fire department or only the police department is included in the retirement plan, the 2 additional members shall be elected from that department and the candidate receiving the highest number of votes shall be elected for the 4-year term and the candidate receiving the second highest number of votes shall be elected for the 2-year term.

(3) Two additional members shall be appointed by the legislative body or another person or body authorized by the city or village charter to appoint administrative officials in any city or village affected by the provisions of this act.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.551 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1959, Act 105, Eff. Mar. 19, 1960
**Popular Name:** Act 345

### 38.551a Short title.

Sec. 1a.

This act shall be known and may be cited as the "fire fighters and police officers retirement act".

**History:** Add. 1989, Act 7, Imd. Eff. May 3, 1989
**Popular Name:** Act 345

### 38.552 Retirement board; powers and duties.

Sec. 2.

The retirement board created under this act shall perform the following:

(1) Make rules and regulations necessary to the proper conduct of the business of the retirement system.

(2) Retain legal, medical, actuarial, clerical, or other services as may be necessary for the conduct of the affairs of the retirement system and make compensations for the services retained.

(3) Cause amounts as established by law to be deducted from the salaries of active members of the retirement system and be paid into the treasury of the retirement system.

(4) Certify to the governing body of the city, village, or municipality the amount to be contributed by the city, village, or municipality as provided in this act.

(5) Cause the examination of each disability pensioner or beneficiary less than 55 years of age to be made at least once a year for the first 5 years following the pensioner's retirement, and at least once each 3 years after the 5 year period, until the pensioner has reached 55 years of age.

(6) Keep records of its meetings and proceedings. The board shall hold meetings at least once each month. The business which the retirement board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(7) The board shall annually elect a president and secretary from among its members.

(8) Disburse the pensions and other benefits payable under this act.

(9) A member of the board shall not receive additional compensation for services as a board member.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.552 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1977, Act 209, Imd. Eff. Nov. 17, 1977
**Constitutionality:** The authority delegated to the retirement board by MCL 38.552 of the Michigan Compiled Laws does not constitutionally abrogate the taxation, budgeting, and legislative responsibilities of the township. Retirement Bd v Shelby Twp, 438 Mich 247; 475 NW2d 249 (1991).
**Popular Name:** Act 345

### 38.552a Compliance with requirements under protecting local government retirement and benefits act.

Sec. 2a.

A retirement board under this act, a retirement system under this act, and a city, village, or municipality that is the custodian of funds of a retirement system under this act shall comply with any applicable requirements under the protecting local government retirement and benefits act.

**History:** Add. 2017, Act 211, Imd. Eff. Dec. 20, 2017
**Popular Name:** Act 345

### 38.553 Retirement system funds; treasurer as custodian; bond; disbursement of funds; execution of voucher or warrant; authorization.

Sec. 3.

The treasurer of the city, village, or municipality shall be the custodian of all funds of the retirement system and shall be required to give a good and sufficient bond to the retirement board for the faithful performance of his or her duties and the safekeeping of all money collected under this act. The bond shall be paid by the city, village, or municipality. The treasurer shall issue warrants for the disbursement of the funds of the retirement system upon the receipt of a voucher signed by at least 2 members of the retirement board other than the treasurer. The treasurer shall not execute a voucher or warrant unless the voucher or warrant has been previously authorized by resolution adopted by the board.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.553 ;-- Am. 1989, Act 7, Imd. Eff. May 3, 1989
**Popular Name:** Act 345

### 38.554 Credit for prior service.

Sec. 4.

All service performed by members prior to the enactment of this act by any city, village or township, including service performed for predecessor townships, shall be computed to the credit of each member so affected.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.554 ;-- Am. 1957, Act 52, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 159, Eff. Sept. 13, 1958
**Popular Name:** Act 345

### 38.555 Retirement board; quasi-judicial body; review of actions by writ of certiorari.

Sec. 5.

The board shall be a quasi-judicial body, and its actions shall be reviewable by writ of certiorari only.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- CL 1948, 38.555
**Popular Name:** Act 345

### 38.556 Age and service retirement benefits.

Sec. 6.

(1) Age and service retirement benefits payable under this act are as follows:

(a) A member who is 55 years of age or older and who has 25 or more years of service as a police officer or fire fighter in the employ of the municipality affected by this act may retire from service upon written application to the retirement board stating a date, not less than 30 days or more than 90 days after the execution and filing of the application, on which the member desires to be retired. The retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement. Upon the approval of the legislative body or the electors of a municipality under this act, a member under 50 years of age who has 25 or more years of service, or without the necessity for approval, a member 50 years of age or more who has 25 or more years of service, may leave service and receive the full retirement benefits payable throughout the member's life as provided in subdivision (e).

(b) A member who is 60 years of age or older shall be retired by the retirement board upon the written application of the legislative body, or board or official provided in the charter of the municipality as head of the department in which the member is employed. Upon retirement, the retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement.

(c) A member who is 65 years of age shall be retired by the retirement board on the first day of the month following attainment of 65 years of age.

(d) A member who has 10 or more years of service shall have vested retirement benefits that are not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in subdivision (a) for any reason except the member's retirement or death, the member is entitled to a pension that shall begin the first day of the calendar month immediately after the month in which the member's written application for the pension is filed with the retirement board that is on or after the date the member would have been eligible to retire had the member continued in employment. The retirement board shall grant the member the benefits to which the member is entitled under this act, unless the member resumes service. If the member resumes service, the member's pension shall be further deferred with service years of credit until the member actually retires.

(e) Upon retirement from service as provided in this subsection, a member shall receive a regular retirement pension payable throughout the member's life of 2% of the member's average final compensation multiplied by the first 25 years of service credited to the member, plus 1% of the member's average final compensation multiplied by the number of years, and fraction of a year, of service rendered by the member in excess of 25 years. A municipality under this act, upon approval of the legislative body or the electors of the municipality, may increase the percentage of the payment from 2% up to a maximum of 2.5%. If an increase is approved, the increase shall not be reduced for members under the system at the time of the increase. The legislative body may also increase the percentage of employee contributions. If a retired member dies before the total of regular pension payments received by the member equals the total of the member's contributions made to the retirement system, the difference between the member's total contributions and the total of the member's regular retirement pension payments received shall be paid in a single sum to the person or persons the member nominates by written designation duly executed and filed with the retirement board. If there is not a person or persons surviving the retired member, the difference, if any, shall be paid to the retired member's legal representative or estate.

(f) As used in this section, "average final compensation" means the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within the member's 10 years of service immediately preceding the member's retirement or leaving service. However, if so provided in a collective bargaining agreement entered into between a municipality under this act and the appropriate recognized bargaining agent, average final compensation may mean the average of the 3 years of highest annual compensation received by a member during the member's 10 years of service immediately preceding the member's retirement or leaving service. If the member has less than 5 years of service, average final compensation means the annual average compensation received by the member during his or her total years of service.

(g) A member shall be given service credit for time spent in the military, naval, marine, or other armed service of the United States government during time of war, or other national emergency recognized by the board, if the member was employed by the municipality at the time of entry into the armed service, and is or was reemployed by the municipality as a police officer or fire fighter within 6 months after the date of termination of his or her required enlistment or assignment in the armed service. A municipality by a 3/5 vote of its governing body or by a majority vote of the qualified electors may provide service credit for not more than 6 years of active military service to the United States government to a member who is employed subsequent to this military service upon payment to the retirement system of 5% of the member's full-time or equated full-time compensation for the fiscal year in which payment is made multiplied by the years of service that the member elects to purchase up to the maximum. Service is not creditable if it is or would be creditable under any other federal, state, or local publicly supported retirement system. However, this restriction does not apply to those persons who have or will have acquired retirement

eligibility under the federal government for service in the reserve. A member shall be given service credit for the time the member is absent from active service without full pay on account of sickness or injury. If the absence from active service is due to nonservice connected sickness or injury, not more than 60 days of the absence shall be credited as service in any 1 calendar year, as determined by the retirement board.

(h) Before the effective date of the member's retirement as provided in this subsection, but not after the effective date of the member's retirement, a member may elect to receive his or her benefit in a pension payable throughout the member's life, called a regular retirement pension, or the member may elect to receive the actuarial equivalent, computed as of the effective date of retirement, of the member's regular retirement pension in a reduced retirement pension payable throughout the member's life, and nominate a survivor beneficiary, under an option provided in this subdivision. Upon the death of a retirant who retires on or after July 1, 1975, and who is receiving a regular retirement pension, his or her spouse, if living, shall receive a pension equal to 60% of the regular retirement pension the deceased retirant was receiving. Benefits shall not be paid under this subdivision on account of the death of a retirant if the member elected to receive his or her pension under an option provided in this subdivision. As used in this subsection, "spouse" means the person to whom the retirant was legally married on both the effective date of retirement and the date of death. Except as otherwise provided in this act, if a member fails to elect an option before the effective date of retirement, then the pension shall be paid as a regular retirement pension. A member may elect 1 of the following options:

(i) Option I. Upon the death of a retired member, his or her reduced retirement pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retired member's life, that the member nominated by written designation executed and filed with the retirement board before the effective date of the member's retirement.

(ii) Option II. Upon the death of a retired member, 1/2 of his or her reduced retirement pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retired member's life, that the member nominated by written designation executed and filed with the retirement board before the effective date of the member's retirement.

(i) If a member continues in service on or after the date of acquiring 20 years of service credit, does not have an option I election provided for in subdivision (j) in force, and dies while in service of the municipality before the effective date of the member's retirement, leaving a surviving spouse, the spouse shall receive a pension computed in the same manner as if the member had retired effective the day preceding the date of the member's death, elected option I provided for in subdivision (h), and nominated the spouse as survivor beneficiary. Upon the death of the spouse the pension shall terminate. A pension shall not be paid under this subdivision on account of the death of a member if benefits are paid under subsection (2) on account of the member's death.

(j) A member who continues in service on or after the date of acquiring 25 years of service credit may, at any time before the effective date of the member's retirement, by written declaration executed and filed with the board in the manner and form prescribed by the board, elect option I provided for in subdivision (h) and nominate a survivor beneficiary whom the board finds to be dependent upon the member for at least 50% of the beneficiary's support. If a member who has an option I election provided for in this subdivision in force dies while in service before the effective date of the member's retirement, the member's survivor beneficiary shall immediately receive the same pension that the survivor beneficiary would have been entitled to receive under option I if the member had retired pursuant to this act effective the day preceding the date of the member's death, notwithstanding that the member may not have attained 55 years of age. If a member who has an option I election provided for in this subdivision in force subsequently retires pursuant to this act, the member, within 90 days immediately preceding the effective date of the member's retirement, but not after the effective date of the member's retirement, may elect an option provided for in subdivision (h). The option election is effective as of the effective date of the member's retirement. A pension shall not be paid under this subdivision on account of the death of a member if benefits are paid under subsection (2) on account of the member's death.

(k) If a retirant receiving a reduced retirement pension under subdivision (h)(i) or (ii) is divorced from the spouse who had been named the retirant's survivor beneficiary under subdivision (h)(i) or (ii), the election of a reduced retirement pension payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in section 9 and dated after June 27, 1991 provides that the election of a reduced retirement pension payment option under subdivision (h)(i) or (ii) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement pension payment option under subdivision (h)(i) or (ii) is considered void by the retirement system under this subsection, the retirant's retirement pension shall revert to a regular retirement pension, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement pension shall revert to a regular retirement pension under this subdivision effective the first day of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subdivision does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subdivision does not require the retirement system to distribute or pay retirement assets on behalf of a

retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(2) Disability and service connected death benefits payable under this act are as follows:

(a) To a surviving spouse, a duty death pension of the same amount each week as that which has been paid the surviving spouse under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable on the termination of the payments to the surviving spouse by a municipality under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue for the surviving spouse's life.

(b) If death results to a member in the line of duty, and the member leaves surviving children, the children shall be paid a pension of the same amount as that which has been paid to them as a weekly benefit under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable upon termination of the payments under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue to each surviving child until he or she attains 18 years of age, or until his or her marriage or death before attaining 18 years of age.

(c) If death results to a member in the line of duty and the member leaves other surviving dependents, the dependents shall receive a pension of the same amount as that which has been paid to them as a weekly benefit under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and payable upon termination of the payments under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue until the time the retirement board determines that the need for a pension no longer exists.

(d) Upon the application of a member or the member's department head, a member who becomes totally incapacitated for duty by reason of a personal injury or disease occurring as the natural and proximate result of causes arising out of and in the course of the member's employment by the municipality shall be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality; that the incapacity is likely to be permanent; and that the member should be retired. Upon retirement for disability as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension of 50% of the member's average final compensation, which shall be determined according to subsection (1)(f), and shall be payable until the member becomes 55 years of age. Upon becoming 55 years of age, the disabled member shall receive a disability retirement pension computed according to subsection (1)(e). In computing the disability retirement pension, the member shall be given service credit for the period of receipt of a disability retirement pension before attainment of 55 years of age. If a member retired after attaining 55 years of age on account of disability, as provided in this subdivision, the member shall receive a disability retirement pension computed according to subsection (1)(e), notwithstanding that the member may not have 25 years of service credit. The disability retirement pension provided for in this subdivision is subject to subdivisions (f) and (g).

(e) Upon the application of a member or the member's department head, a member in service who has 5 or more years of service credit and who becomes totally and permanently incapacitated for duty by reason of a personal injury or disease occurring as the result of causes arising outside the course of the member's employment by the municipality may be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality, that the incapacity is likely to be permanent, and that the member should be retired. Upon retirement for disability, as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension until the member becomes 55 years of age, recovers, or dies, whichever occurs first, of 1.5% of the member's average final compensation multiplied by the number of years of service credited to the member. Upon becoming 55 years of age, the member's disability retirement pension shall be increased to 2% of the member's average final compensation multiplied by the number of years of service credited to the member at the time of his or her retirement. Upon retirement for disability as provided in this subdivision, a member who is 55 years of age or older shall receive a disability retirement pension computed according to subsection (1)(e). This subdivision is subject to subdivisions (f) and (g).

(f) At least once each year during the first 5 years after the retirement of a member with a disability retirement pension and at least once in every 3-year period after disability retirement, the retirement board may, and upon the retired member's application shall, require a retired member who has not attained 55 years of age to undergo a medical examination. The medical examination shall be given by or under the direction of a physician, designated by the retirement board, at the place of residence of the retired member or other place mutually agreed upon. If a retired member who has not attained 55 years of age refuses to submit to the medical examination in the period, the

member's disability retirement pension may be discontinued by the retirement board. If the member's refusal continues for 1 year, all the member's rights to his or her disability retirement pension may be revoked by the retirement board. If upon a medical examination of the retired member the physician reports to the retirement board that the retired member is physically capable of resuming employment in the classification held by the member at the time of retirement, the member shall be restored to active service in the employ of the municipality and payment of the disability retirement pension shall cease if the report of the physician is concurred in by the retirement board. A retired member restored to active service shall again become a member of the retirement system from the date of return to service. The member shall contribute to the retirement system after restoration to active service in the same manner as before the member's disability retirement. Service credited to the member at the time of disability retirement shall be restored to full effect. The member shall be given service credit for the period the member was receiving a duty disability retirement pension provided for in subdivision (d), but shall not be given service credit for the period the member was receiving a nonduty disability retirement pension provided for in subdivision (e). Amounts paid under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to a retired member shall be offset against and payable in place of benefits provided under this act. If the benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are less than the benefits payable under this act, the amount to be paid out of the funds of the retirement system shall be the difference between the benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and the benefits provided in this act. Upon the termination of benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the benefits shall be paid pursuant to this act.

(g) Within 60 days before a member becomes 55 years of age, or before retirement from service if retirement occurs after the member becomes 55 years of age, a disabled member who is retired as provided in subdivision (d) or (e) may elect to continue to receive a disability retirement pension as a benefit terminating at death, to be known as a regular disability pension, or may elect to receive the actuarial equivalent, at that time, of a regular disability pension in a reduced disability pension payable throughout life pursuant to an option provided in subsection (1)(h). If a disabled member fails to elect an option, as provided in this subdivision, before becoming 55 years of age or before retirement, the member's retirement pension shall be paid to the member as a regular disability pension terminating at death. If a disabled member who has not elected an option provided in subsection (1)(h) dies before the total of the member's regular disability pension payments received equals or exceeds the total of the member's contributions made to the retirement system, the remainder, if any, shall be paid in a single sum to the person or persons nominated by the member by written designation duly executed and filed with the board. If there is not a designated person or persons surviving, then the remainder, if any, shall be paid to the retired member's legal representative or estate.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.556 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1954, Act 173, Eff. Aug. 13, 1954 ;-- Am. 1955, Act 263, Imd. Eff. June 29, 1955 ;-- Am. 1956, Act 169, Imd. Eff. Apr. 16, 1956 ;-- Am. 1959, Act 224, Eff. Mar. 19, 1960 ;-- Am. 1961, Act 201, Eff. Sept. 8, 1961 ;-- Am. 1965, Act 137, Imd. Eff. July 12, 1965 ;-- Am. 1967, Act 256, Eff. Nov. 2, 1967 ;-- Am. 1970, Act 230, Imd. Eff. Nov. 25, 1970 ;-- Am. 1975, Act 147, Imd. Eff. July 9, 1975 ;-- Am. 1976, Act 118, Imd. Eff. May 14, 1976 ;-- Am. 1976, Act 321, Eff. Mar. 31, 1977 ;-- Am. 1989, Act 7, Imd. Eff. May 3, 1989 ;-- Am. 1991, Act 54, Imd. Eff. June 27, 1991 ;-- Am. 2002, Act 98, Imd. Eff. Mar. 27, 2002 ;-- Am. 2003, Act 8, Imd. Eff. May 20, 2003
**Popular Name:** Act 345

### 38.556a Municipality having population of 80,000 or more; applicability of MCL 38.556(1)(h) to certain members.

Sec. 6a.

In a municipality having a population of 80,000 or more, section 6(1)(h) shall be applicable to any member who continues in service on or after the date he or she acquires 15 years of service credit.

**History:** Add. 1963, Act 57, Eff. Sept. 6, 1963 ;-- Am. 1982, Act 145, Imd. Eff. Apr. 28, 1982 ;-- Am. 2003, Act 8, Imd. Eff. May 20, 2003
**Popular Name:** Act 345

### 38.556b Remarriage of surviving spouse; applicability of subsection (1) to municipality.

Sec. 6b.

(1) Notwithstanding section 6 or any predecessor to section 6, the remarriage of a surviving spouse shall not render the surviving spouse ineligible to receive a pension described in section 6(1)(i) or a duty death pension described in section 6(2)(a). A surviving spouse whose pension described in section 6(1)(i) or duty death pension described in section 6(2)(a) was terminated due to the surviving spouse's remarriage shall be eligible to receive that pension or duty death pension beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the pension or duty death pension attributable to any month beginning before the month of reinstatement under this section.

(2) Beginning on the effective date of the amendatory act that amended this subsection, the provisions of subsection (1) that apply to a surviving spouse who is eligible to receive a pension described in section 6(1)(i) shall apply to a municipality upon approval by resolution of the governing body of the municipality.

(3) Beginning on the effective date of the amendatory act that added this subsection, a surviving spouse who is eligible to receive a duty death pension described in section 6(2)(a) and who remarries after the effective date of the amendatory act that added this subsection shall not be denied a duty death pension described in section 6(2)(a) by a municipality because of the remarriage of the surviving spouse.

**History:** Add. 1986, Act 30, Imd. Eff. Mar. 10, 1986 ;-- Am. 2003, Act 8, Imd. Eff. May 20, 2003
**Compiler's Notes:** Former MCL 38.556b, pertaining to vested rights in pensions and benefits, was repealed by Act 321 of 1976.
**Popular Name:** Act 345

### 38.556c Service credit for employment in transitional public employment program; payment of contributions and regular interest; payroll deduction; amount in reserve; payment of contributions by current employer; accident, disability, or other benefits.

Sec. 6c.

(1) If a person who participated in a transitional public employment program becomes a member of a retirement system established under this act within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment in the transitional public employment program for purposes of determining a retirement allowance upon the payment by the person and the person's employer under the transitional public employment program from funds provided under the comprehensive employment and training act, 29 U.S.C. 801 to 992, as funds permit, to the retirement system of the contributions, plus regular interest, the person and the employer would have paid had the employment been rendered in a position covered by this act. During the person's employment in the transitional public employment program, the person's employer shall provide an opportunity by payroll deduction for the person to make his or her employee contribution to the applicable pension system. To provide for the eventual payment of the employer's contribution, the person's employer shall during this same period place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions which the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees which the employer determined would transfer from the transitional public employment program into positions covered by this act. If the funds provided under the comprehensive employment and training act are insufficient, the remainder of the employer contributions shall be paid by the person's current employer.

(2) The provisions of subsection (1) shall not exclude the participant in a transitional public employment program from the accident, disability or other benefits available to members of the retirement system covered by this act.

**History:** Add. 1978, Act 421, Imd. Eff. Sept. 30, 1978
**Popular Name:** Act 345

### 38.556d Postretirement adjustments increasing retirement benefits.

Sec. 6d.

A municipality, by ordinance or in another manner provided by law, may adopt from time to time benefit

programs providing for postretirement adjustments increasing retirement benefits. Such benefit programs may provide for 1-time postretirement percentage increases in retirement benefits; annual or other periodic postretirement percentage increases in retirement benefits; lump sum postretirement distributions; or any other method considered appropriate by the municipality. The retirement benefit payable after making an adjustment pursuant to the benefit program adopted shall be the new retirement benefit payable until the next adjustment, if any, is made.

**History:** Add. 1987, Act 145, Imd. Eff. Oct. 26, 1987
**Popular Name:** Act 345

### 38.556e Mandatory subjects of bargaining.

Sec. 6e.

Notwithstanding any other provisions of this act, any matter relating to the retirement system provided by this act, including, but not limited to, postretirement adjustment increases, applicable to current employees represented by a collective bargaining agent is a mandatory subject of bargaining under the public employment relations act, Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

**History:** Add. 1987, Act 145, Imd. Eff. Oct. 26, 1987
**Popular Name:** Act 345

### 38.557 “An act of duty,”“municipality” and “transitional public employment program” defined.

Sec. 7.

As used in this act:

(a) "An act of duty" means an act performed by a fire fighter or police officer arising out of and in the course of employment, or the performance of an act pertinent or incidental to the work of a fire fighter or police officer, regardless of time or place.

(b) "Municipality" includes a county, township, charter township, city, or incorporated village.

(c) "Transitional public employment program" means a public service employment program in the area of environmental quality, health care, education, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans' outreach, or any other area of human betterment and community improvement as part of a program of comprehensive manpower services authorized, undertaken, and financed pursuant to the comprehensive employment and training act of 1973, 29 U.S.C. 801 to 992.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- CL 1948, 38.557 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1968, Act 210, Imd. Eff. June 24, 1968 ;-- Am. 1978, Act 421, Imd. Eff. Sept. 30, 1978
**Popular Name:** Act 345

### 38.558 Refunds of salary contributions.

Sec. 8.

Refunds of salary contributions:

(1) If a fire fighter or police officer dies before being placed on pension, the total amount of the member's salary deductions, with interest as the board may determine, but not to exceed 2% per annum, shall be payable to the person or persons that the member nominated by written designation duly executed and filed with the board. If

there is no designated person or persons surviving, then the total of the member's salary deductions shall be paid to the member's legal representative or estate.

(2) If a fire fighter or police officer becomes separated from the service before being eligible for retirement, the member shall be paid the total of the member's contributions together with interest as the board may determine, but not to exceed 2% per annum credited to the member upon his or her written request for a refund. If the person again becomes employed by the city, village, or municipality as a police officer or fire fighter, he or she shall, within 1 year following his or her reemployment, repay to the retirement system the amount previously withdrawn together with interest at 2% per year.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.558 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1957, Act 52, Eff. Sept. 27, 1957 ;-- Am. 1989, Act 7, Imd. Eff. May 3, 1989

**Popular Name:** Act 345

## 38.559 Contributions of member; rate; deduction from salary; appropriations to maintain actuarially determined reserves; payment of deductions and appropriations into retirement system; prorating pensions and other benefits; expenses; pensions as obligations of retirement system.

Sec. 9.

(1) The contributions of a member to the retirement system shall be 5% of the salary paid to the member by the municipality. The officer responsible for making up the payroll shall cause the contributions provided for in this subsection to be deducted from the salary of each member on each payroll for each payroll period so long as he or she remains an active member in the employ of the municipality. The amounts deducted shall be paid into the funds of the retirement system. The members' contributions provided for in this act shall be made notwithstanding that the minimum salary provided for by law is changed by the members' contributions. Every member shall be considered to consent and to agree to the deductions made and provided for in this act and shall receipt for his or her full salary and payment of his or her salary less the deduction, which is a full and complete discharge and acquittance of all claims and demands for the services rendered by the member during the period covered by the payment, except as to benefits provided by this retirement system.

(2) For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, the amount required by taxation to meet the appropriations to be made by municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963.

(3) If, at the beginning or during any fiscal year, it has been satisfactorily determined by the retirement board that the accumulated funds of the retirement system plus the municipality's contribution of 10% of the aggregate pay received during that fiscal year by members of the retirement system plus members' contributions of 5% of payroll, are insufficient to pay all pensions and other benefits due and payable in that year out of funds of the retirement system, then all pensions and other benefits payable shall be prorated for the remainder of the fiscal year by the retirement board.

(4) Any clerical, legal, actuarial, or medical expenses required by the retirement board, or any other necessary expense for the operation of the retirement system, shall be provided for by the municipality or shall be paid from the investment income of the retirement system, as determined by the governing body of the municipality. The retirement board shall submit expenses periodically to the governing body of the municipality. If use of investment income to pay these expenses causes an actuarial insufficiency in the assets of the retirement system used to pay pensions, the insufficiency shall be made up by the municipality.

(5) All pensions allowed and payable to retired members and beneficiaries under this act shall become obligations

of and be payable from the funds of the retirement system.

(6) The right of a person to a pension, to the return of member contributions, to any optional benefits, or any other right accrued or accruing to a member or beneficiary under this act and the money belonging to the retirement system is subject to the public employee retirement benefit protection act.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.559 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1985, Act 36, Imd. Eff. June 13, 1985 ;-- Am. 1987, Act 145, Imd. Eff. Oct. 26, 1987 ;-- Am. 1991, Act 54, Imd. Eff. June 27, 1991 ;-- Am. 2002, Act 98, Imd. Eff. Mar. 27, 2002
**Popular Name:** Act 345

### 38.560 Investments; transfer and disposition of certain assets.

Sec. 10.

Any and all cash assets and funds on hand not necessary for immediate payment of pensions or benefits under this act shall be invested subject to all the terms, conditions, limitations, and restrictions imposed by the statutes of this state upon life insurance companies in making and disposing of their investments, and as provided by law relating to investment authority of public employee retirement systems under Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, and any and all assets of every description of the pension or retirement fund created by any city, village, or municipality under this act shall be transferred and deposited to the credit of the newly created retirement system under this act.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.560 ;-- Am. 1965, Act 33, Eff. Mar. 31, 1966 ;-- Am. 1989, Act 7, Imd. Eff. May 3, 1989
**Popular Name:** Act 345

### 38.561 Referendum; township or charter township.

Sec. 11.

At any time after this act shall become effective, any city, village or municipality having a paid or part paid fire or police department, may come under the provisions of this act and create a pension board hereunder by submitting the same to the electors of any such city, village or municipality at any regular or special election for adoption, in the manner provided by law for amending charters: Provided, That this act shall not become effective until the beginning of the next succeeding fiscal year after such adoption of the provisions of this act by any city, village or municipality: Provided further, That where no provision is made in the charter of the city, village or municipality for amending said charters, this act may be submitted for adoption in accordance with any law authorizing the amending of the charters of cities: Provided further, That in case of a township or charter township, this act shall be submitted to the qualified electors of such township or townships by the township board on the filing of a petition requesting the submission, signed by 10 per cent of the registered and qualified electors in such township or charter township, at any general election or special election called for that purpose by the township board, in accordance with the laws of this state, and this act shall be in force and effect in any such township or charter township if a majority of the electors voting on such proposition, as determined by the canvass of votes cast, shall vote in favor thereof.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1945, Act 256, Eff. Sept. 6, 1945 ;-- CL 1948, 38.561 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951
**Popular Name:** Act 345

### 38.561a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 11a.

A petition under section 11, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

**History:** Add. 1998, Act 200, Eff. Mar. 23, 1999
**Popular Name:** Act 345

### 38.562 Membership of retirement system.

Sec. 12.

(1) The membership of the retirement system created by a municipality affected by this act shall include each police officer and fire fighter employed by a municipality. A police officer or fire fighter, who is a member of the retirement system and who is transferred from the classification of a police officer or fire fighter to a civilian position within the police or fire department or who is transferred from the police or fire department of the municipality to another department of the municipality by an officer or body of the municipality authorized to make the transfer, shall continue as a member of this retirement system covering the police officers and fire fighters, and shall be subject to the provisions of the retirement system. If the officers and employees of the department to which the person is transferred are covered by an annuity pension or retirement system to which the municipality makes contributions and the person transferred becomes entitled to membership in that system, the person shall cease to be a member of this police officer and fire fighter retirement system.

(2) The membership of the retirement system shall not include a volunteer fire fighter, a privately employed police officer or fire fighter, a person temporarily employed during an emergency, a civilian employee of a police and fire department, or a person participating in a transitional public employment program, except as provided in subsection (1) and section 6c.

**History:** 1937, Act 345, Eff. Oct. 29, 1937 ;-- Am. 1939, Act 210, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 229, Imd. Eff. June 17, 1947 ;-- CL 1948, 38.562 ;-- Am. 1951, Act 16, Imd. Eff. Mar. 30, 1951 ;-- Am. 1978, Act 421, Imd. Eff. Sept. 30, 1978
**Popular Name:** Act 345

## FIREMEN AND POLICEMEN PENSIONS

## Act 28 of 1966

AN ACT to authorize the board of trustees of police and firemen retirement systems, municipal employees retirement systems, or county retirement systems to increase benefits.

**History:** 1966, Act 28, Imd. Eff. May 3, 1966 ;-- Am. 1968, Act 201, Imd. Eff. June 24, 1968 ;-- Am. 2002, Act 602, Imd. Eff. Dec. 20, 2002

*The People of the State of Michigan enact:*

### 38.571 Reserve fund; use of interest for medical, hospital, or nursing care for system member; "reserve fund" defined.

Sec. 1.

Subject to the protecting local government and retirement benefits act, the board of trustees with the approval of

the governing body of the county, city, village, or township of any police and firemen retirement system, municipal employees retirement system, or county retirement system may use not more than 1/2 of the interest earned by any reserve fund in the system to contract for medical, hospital, or nursing care for any person receiving benefits of the system. As used in this section, "reserve fund" means the money contributed by the city, village, township, or county.

**History:** 1966, Act 28, Imd. Eff. May 3, 1966 ;-- Am. 1968, Act 201, Imd. Eff. June 24, 1968 ;-- Am. 2002, Act 602, Imd. Eff. Dec. 20, 2002 ;-- Am. 2017, Act 206, Imd. Eff. Dec. 20, 2017

### 38.572 Computation of liability for regular interest; inclusions; exclusions.

Sec. 2.

The amount of interest used according to the provisions of this act shall be included as interest and other earnings on the money of the retirement system in the computation of any city, village, township, or county liability for regular interest. These supplemental benefits shall not be considered an increase in the rate of retirement allowances to be paid. They shall be on a year-to-year basis and shall not create a liability for their continuance.

**History:** 1966, Act 28, Imd. Eff. May 3, 1966 ;-- Am. 2002, Act 602, Imd. Eff. Dec. 20, 2002

## MILITARY SERVICE CREDITS IN POLICE AND FIREMEN RETIREMENT SYSTEMS

### Act 276 of 1976

AN ACT to provide military service credits in police and firemen retirement systems.

**History:** 1976, Act 276, Imd. Eff. Oct. 14, 1976

*The People of the State of Michigan enact:*

### 38.581 Police or fireman's retirement system; military service credit.

Sec. 1.

A city, village, or township which has a police or fireman's retirement system which is not included under Act No. 345 of the Public Acts of 1937, as amended, being sections 38.551 to 38.562 of the Michigan Compiled Laws, may provide for a military service credit, not to exceed 5 years, to a member of the retirement system employed subsequent to his service in the military.

**History:** 1976, Act 276, Imd. Eff. Oct. 14, 1976

### 38.582 Military service credit; computation of payment to retirement system.

Sec. 2.

A member who elects to claim the service credit provided for in section 1 shall pay to the retirement system an amount, together with interest, equal to the annual contribution rate in effect at the time of his election multiplied

by the period of military service claimed.

**History:** 1976, Act 276, Imd. Eff. Oct. 14, 1976

## MUNICIPAL EMPLOYEES' RETIREMENT ACT

### Act 135 of 1945

38.601-38.669 Repealed. 1953, Act 213, Eff. Oct. 2, 1953;—1955, Act 160, Imd. Eff. June 7, 1955;—1969, Act 314, Imd. Eff. Aug. 14, 1969;—1980, Act 126, Imd. Eff. May 22, 1980;—1984, Act 427, Imd. Eff. Jan. 2, 1985.

## COMBINED RETIREMENT SYSTEMS

### Act 137 of 1967

AN ACT to authorize political subdivisions or other governmental instrumentalities created pursuant to state or local law to enter into agreements relative to establishing, combining, and financing retirement systems.

**History:** 1967, Act 137, Eff. Nov. 2, 1967 ;-- Am. 1979, Act 200, Imd. Eff. Jan. 2, 1980

*The People of the State of Michigan enact:*

### 38.691 Agreement to establish, combine, and finance retirement systems.

Sec. 1.

Any 2 or more political subdivisions or other governmental instrumentalities created pursuant to state or local law may enter into an agreement to establish, combine, and finance retirement systems for their respective employees and officials, elected or appointed.

**History:** 1967, Act 137, Eff. Nov. 2, 1967 ;-- Am. 1979, Act 200, Imd. Eff. Jan. 2, 1980

## CITY LIBRARY EMPLOYEES' RETIREMENT SYSTEM

### Act 339 of 1927

AN ACT to authorize the establishment of a system of retiring allowances for employes of public libraries now existing or which may hereafter be established in incorporated cities of 250,000 population or more.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927

*The People of the State of Michigan enact:*

### 38.701 City library employees' retirement system; establishment.

Sec. 1.

The legislative body of any incorporated city of 250,000 or more (hereinafter referred to for the purposes of this act as the local legislative body), where free public libraries have been or may hereafter be established is hereby authorized, upon the application and recommendation of the local library board or commission or body duly authorized by law to maintain free public libraries in such city (hereinafter referred to for the purposes of this act as the library board), to establish a system of retiring allowances for the employes of such libraries which system shall be based upon the principle that there shall be accumulated, year by year, a reserve fund sufficient to provide the agreed annuity at the time of retirement. Upon the establishment of such system, the local legislative body shall raise by taxation each year a sum which will provide an adequate reserve fund.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927 ;-- CL 1929, 8109 ;-- CL 1948, 38.701

## 38.702 Library board; submission of retirement plan to local legislative body; retirement plan subject to protecting local government retirement and benefits act.

Sec. 2.

(1) A library board described in section 1 that desires to establish a retirement system shall apply to the local legislative body and submit to the local legislative body for its approval and adoption a detailed plan for the retirement system, which must be based on the following provisions and conditions:

(a) It must enumerate the classes of employees to be included in the retirement system.

(b) Subject to subsection (2), it must fix the amount of the annual retirement allowance, the number of years of service necessary to entitle an employee to a retirement allowance, the age at which an employee may be retired, the nature and extent of the physical or mental disability that entitles an employee to retire before reaching the age of retirement, and the conditions on which the age of retirement may be anticipated.

(c) It must provide for a body to be known as the retirement fund trustees, which must consist of 5 members. Two members must be elected by the staff; 2 members must be appointed by the local legislative body; and the terms of office of the members must be 4 years, except that when the retirement system is first put into effect, the terms of office must be fixed so that 1 member's term expires each year. The fifth member must be, ex-officio, the presiding officer of the library board. The trustees shall have charge of the retirement allowance fund and shall invest the retirement allowance fund only in securities that are legal for savings banks. The trustees shall adopt any rules and bylaws that may be necessary and not inconsistent with the state constitution of 1963, laws of this state, and this act.

(d) There must be attached to the retirement system as may be recommended, the certificate of a recognized and competent actuary stating that the retirement system is actuarially sound, and the retirement system must provide for annual reports and valuations by the actuary to determine whether the fund is on a sound financial and actuarial basis.

(2) Notwithstanding anything in this act to the contrary, a retirement system established under this act is subject to the protecting local government retirement and benefits act.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927 ;-- CL 1929, 8110 ;-- CL 1948, 38.702 ;-- Am. 2017, Act 212, Imd. Eff. Dec. 20, 2017

## 38.703 Approval of plan by legislative body; commencement.

Sec. 3.

Upon the submission by said library board of a plan for a system of retiring allowances, the local legislative body shall take the same under consideration and shall then, in conference with said library board agree upon the details of said plan and if said plan so agreed upon differs from the one submitted, it shall, before adoption, be submitted to an actuary for report upon its financial and actuarial soundness and, if certified to be sound, may then be adopted. The plan shall then be put into operation at the beginning of the next fiscal year, unless an earlier date is agreed upon.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927 ;-- CL 1929, 8111 ;-- CL 1948, 38.703

### 38.704 Annual assessment for retirement allowance.

Sec. 4.

When a system for retiring allowances has been agreed upon by the local legislative body and the library board and formally adopted by the former, then it shall be the duty of said local legislative body to raise by taxation each year, the sum found necessary to produce the retiring allowance fund required by the system adopted.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927 ;-- CL 1929, 8112 ;-- CL 1948, 38.704

### 38.705 Reserve fund and annuities; tax exemption; subject to taxation beginning January 1, 2012.

Sec. 5.

(1) Except as otherwise provided in this section, if a system of retiring allowances is adopted under this act, the reserve fund created is exempt from all state, county, township, city, village, and school district taxes and the annuities payable to the members of the staff are exempt from all state, county, township, city, village, and school district taxes.

(2) Beginning January 1, 2012, the annuities payable to the members of the staff are subject to state taxes.

**History:** 1927, Act 339, Imd. Eff. June 1, 1927 ;-- CL 1929, 8113 ;-- CL 1948, 38.705 ;-- Am. 2011, Act 44, Imd. Eff. May 25, 2011

### 38.706 Municipal employees' retirement system; coverage of employees of public libraries.

Sec. 6.

In lieu, however, of formulating any plan under the foregoing sections of this act the library board and the local legislative body may, by concurrent resolution, adopt and put into effect for the employes of the library any plan which may have been, or may hereafter be, adopted for the employes of the city.

**History:** Add. 1935, Act 154, Imd. Eff. June 4, 1935 ;-- CL 1948, 38.706

## WOMEN PHYSICIANS IN STATE INSTITUTIONS

## Act 185 of 1899

38.752 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

## SALARIES IN STATE INSTITUTIONS

## Act 286 of 1907

38.761-38.764 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

## VACATIONS FOR STATE EMPLOYEES

### Act 358 of 1913

38.791,38.792 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

## JUDGES' RETIREMENT ACT

### Act 198 of 1951

38.801-38.831 Repealed. 1974, Act 337, Imd. Eff. Dec. 18, 1974;—Am. 1992, Act 234, Eff. Mar. 31, 1993.

## CALCULATION OF RETIREMENT BENEFITS BY LOCAL UNITS OF GOVERNMENT

### Act 443 of 1980

AN ACT to impose certain requirements on local units of government in determining retirement benefits for certain employees.

**History:** 1980, Act 443, Eff. Sept. 1, 1981 ;-- Am. 1982, Act 509, Imd. Eff. Dec. 31, 1982

*The People of the State of Michigan enact:*

### 38.841 Definitions.

Sec. 1.

As used in this act:

(a) "Local unit of government" means a county, city, township, or other political subdivision of this state which offers its employees a retirement plan in which a judge may be a member.

(b) "Judge" means a judge of the district court, the circuit court, or the recorder's court of the city of Detroit, who has converted a portion of his or her state salary standardization payment as an addition to his or her state base salary under section 14a or 14c of Act No. 198 of the Public Acts of 1951, as amended, being sections 38.814a and 38.814c of the Michigan Compiled Laws. For purposes of sections 2 and 6, "judge" also means a judge of the probate court.

**History:** 1980, Act 443, Eff. Sept. 1, 1981 ;-- Am. 1982, Act 509, Imd. Eff. Dec. 31, 1982 ;-- Am. 1984, Act 188, Imd. Eff. July 3, 1984

### 38.842 Computing retirement benefits for judge employed by local unit of government.

Sec. 2.

A local unit of government, for the purpose of computing retirement benefits of an employee who is a judge, shall use a figure which is the difference between the figure otherwise used under the local unit's retirement plan to compute retirement benefits, and those portions, if any, of the state salary standardization payment which are converted as an addition to the judge's state base salary for the purpose of computation of retirement benefits pursuant to sections 14a and 14c of Act No. 198 of the Public Acts of 1951, being sections 38.814a and 38.814c of the Michigan Compiled Laws.

**History:** 1980, Act 443, Eff. Sept. 1, 1981 ;-- Am. 1982, Act 509, Imd. Eff. Dec. 31, 1982 ;-- Am. 1984, Act 188, Imd. Eff. July 3, 1984

**38.843 Conditional effective date; adoption of resolutions by city of Detroit and county of Wayne assuming responsibility for expenses; effect of action.**

Sec. 3.

(1) This amendatory act shall not take effect unless the city of Detroit and the county of Wayne, by resolutions adopted not later than May 1, 1981, by the governing bodies of the city and the county, respectively, agree to assume responsibility for any expenses required of the city or the county by this amendatory act and the bills listed in enacting section 4 which are enacted and take effect.

(2) If the city of Detroit and the county of Wayne, acting through their governing bodies, agree to assume responsibility for any expenses required of the city and the county by this amendatory act and the bills listed in enacting section 4 which are enacted and take effect, that action constitutes an exercise of the city's and the county's option to provide a new activity or service or to increase the level of activity or service offered in the city of Detroit and the county of Wayne beyond that required by existing law, as the elements of that option are defined by Act No. 101 of the Public Acts of 1979, being sections 21.231 to 21.244 of the Michigan Compiled Laws, and a voluntary acceptance by the city and the county of all expenses and capital improvements which may result from establishment of the district court in the thirty-sixth district and the reorganization of the circuit court in the third judicial circuit and the recorder's court of the city of Detroit. However, the exercise of the option does not affect the state's obligation to pay the same portion of each district or circuit judge's salary which is paid by the state to the other district or circuit judges, or to appropriate and disburse funds to the district control units, city, or county, for the necessary costs of state requirements established by a state law, other than this amendatory act or the bills listed in enacting section 4, which becomes effective on or after December 23, 1978.

**History:** 1980, Act 443, Eff. Sept. 1, 1981
**Compiler's Notes:** The words “this amendatory act” and “enacting section 4” appearing in this section evidently should read “this act” and “section 4”, respectively.The resolutions referred to in this section were adopted by the city council of the city of Detroit on April 29, 1981, and by the board of commissioners of the county of Wayne on April 30, 1981.

**38.844 Conditional effective date.**

Sec. 4.

This amendatory act shall not take effect unless the following bills of the 1980 regular session of the legislature are enacted into law:

(a) House Bill No. 4789.
(b) House Bill No. 5630.
(c) House Bill No. 5711.
(d) House Bill No. 5748.
(e) Senate Bill No. 1106.

**History:** 1980, Act 443, Eff. Sept. 1, 1981
**Compiler's Notes:** “This amendatory act” at the beginning of this section evidently should read “This act”.The following House and Senate Bills, referred to in this section, were enacted into law as follows:House Bill No. 4789 was approved by the Governor on January 15, 1981,

and became P.A. 1980, No. 439.House Bill No. 5630 was approved by the Governor on January 15, 1981, and became P.A. 1980, No. 440.House Bill No. 5711 was approved by the Governor on January 15, 1981, and became P.A. 1980, No. 441.House Bill No. 5748 was approved by the Governor on January 15, 1981, and became P.A. 1980, No. 442.Senate Bill No. 1106 was approved by the Governor on January 15, 1981, and became P.A. 1980, No. 438.

### 38.845 Effective date.

Sec. 5.

This act shall take effect September 1, 1981.

**History:** 1980, Act 443, Eff. Sept. 1, 1981

### 38.846 Sum of salary or compensation figure used for determining retirement benefit and final salary of probate court judge not to exceed total annual judicial salary at retirement.

Sec. 6.

Beginning September 1, 1981, the sum of the salary or compensation figure used by a retirement plan offered by a local unit of government subject to this act as the basis for determining a judge's retirement benefit as a member of that plan and the final salary determined for the judge pursuant to Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.830 of the Michigan Compiled Laws, or Act No. 165 of the Public Acts of 1954, as amended, being sections 38.901 to 38.933 of the Michigan Compiled Laws, if the judge is a judge of the probate court, shall not exceed the judge's total annual judicial salary payable from all sources at the time of his or her retirement. This section shall not be construed to diminish or impair an accrued financial benefit.

**History:** Add. 1982, Act 509, Imd. Eff. Dec. 31, 1982

## SOCIAL SECURITY FOR PUBLIC EMPLOYEES

### Act 205 of 1951

AN ACT to provide for the coverage of certain officers and employees of the state of Michigan, of instrumentalities of the state of Michigan, of interstate instrumentalities jointly created by the state of Michigan and any other state or states, and of local governments of the state of Michigan under the old-age and survivors insurance provisions of title II of the federal social security act, as amended; to prescribe the powers and duties of the state retirement board in respect to such coverage; to provide for the cost of administration of this act by collections from employers above the costs of coverage.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

*The People of the State of Michigan enact:*

### 38.851 Federal social security old-age and survivors insurance coverage; extension to public employees; maintenance of benefits.

Sec. 1.

In order to extend to employees of the state of Michigan and its political subdivisions and to the dependents and survivors of such employees, the provisions of old-age and survivors insurance system embodied in the social security act, it is hereby declared to be agreeable to the state, subject to the limitations of this act, that such steps be taken as to provide such coverage to employees of the state and its political subdivisions, on as broad a basis as permitted by title II of the social security act.

In the event the positions of any coverage group covered by any public retirement system shall become covered under old-age and survivors insurance, then the aggregate benefits, old-age and survivors insurance and those of the public retirement system combined, for such public employees in positions covered by a retirement system on January 1, 1955, and for those receiving or entitled to receive periodic benefits from such retirement systems on January 1, 1955, shall not be less than the benefits provided by their respective retirement acts, charters, ordinances, or other official instruments of coverage in effect on January 1, 1955.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955

**38.852 Extension of social security to public employees; definitions.**

Sec. 2.

For the purposes of this act—

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act;

(b) The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, including service performed by a circuit court stenographer in any county which pays any part of his wages, for such employer, except (1) service which in the absence of agreement entered into under this act would constitute "employment" as defined in the social security act; (2) service which under the social security act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this act: Provided, That no existing retirement system may hereafter be abolished in whole for the purpose of bringing the employees of such political subdivision under the provisions of this act: Provided, All services of an emergency nature shall be excluded, and that service (1) in any class or classes of part time positions, (2) in any class or classes of positions filled by popular election, (3) of a student, (4) performed in agricultural labor, or (5) any positions the compensation for which is on a fee basis, may be excluded in a plan submitted under section 8 of this act: Provided further, That service which under the social security act may be included in an agreement only upon certification by the governor or an official delegated by him in accordance with section 218 (d) (3) of title II of the social security act shall be included in the term "employment" if and when the governor or an official delegated by him issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to section 21 (b) of this act;

(c) The term "employee" includes an officer, including elected officials, of a state or political subdivision thereof; and shall include as service performed for a county, service performed by a circuit court stenographer in each county which pays any part of his wages. It shall also include persons defined as "public school employees" under section 1 of chapter 1 of Act No. 136 of the Public Acts of 1945, as amended, and persons defined as "member" under section 11 of chapter II of said act;

(d) The term "department" means the retirement board of the retirement system created and established by Act No. 240 of the Public Acts of 1943, as amended, being sections 38.1 to 38.43 of the Compiled Laws of 1948; Provided, however, That the department is authorized, pursuant to an agreement with the head of any state agency, to delegate any of its functions under this act which involved the correcting of reports or the auditing of the records of political subdivisions, to any officer or employee of such state agency, and the terms of payment therefor shall be provided in such agreement;

(e) The term "secretary of health, education, and welfare" includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such functions.

(f) The term "political subdivision" includes the regents of the university of Michigan, the state board of agriculture, and an instrumentality (1) of the state, (2) of 1 or more of its political subdivisions, or (3) of the state and 1 or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally

separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision: Provided, however, That any organization which has been held to be exempt from taxes imposed by sections 1400 and 1410 of the federal insurance contributions act, by reason of being an instrumentality of 1 or more political subdivisions of the state which is wholly owned by 1 or more subdivisions of the state within the exception provided by sections 1426 (b) (8) and 1607 (c) (7) of the federal insurance contributions act, shall be deemed for the purposes of this act to be a juristic entity and shall be accepted for coverage under this act upon depositing with the department a sum in cash or government bonds equal to 4 times the estimated average quarterly contributions for which such instrumentality shall be liable under the agreement entered into with the department, which deposit shall be continuously maintained as recomputed from time to time in accordance with current estimates of such average quarterly contributions;

(g) The term "social security act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "social security act," (including regulations and requirements issued pursuant thereto), as such act was last amended prior to the effective date of this act; and

(h) The term "federal insurance contributions act" means sub-chapter A of chapter 9 of the federal internal revenue code of 1939 and sub-chapters A and B of chapter 21 of the federal internal revenue code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such code of 1939 and section 3101 of such code of 1954.

(i) The term "plan" shall be confined to the old-age and survivors insurance program of the social security act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1953, Act 137, Eff. Oct. 2, 1953 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955 ;-- Am. 1961, Act 83, Eff. Sept. 8, 1961
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.

### 38.853 Agreement to extend benefits of federal old-age and survivors insurance system; contents; approval; separate retirement systems.

Sec. 3.

(a) The department may enter on behalf of the state into an agreement with the secretary of health and human services, consistent with this act, for purposes of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision of this state for services specified in the agreement which constitute employment as defined in section (2)(b). The agreement may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the department and the secretary of health and human services agree upon. However, the agreement shall be approved by the attorney general and shall provide for all of the following:

(1) That the agreement shall be effective for services in employment covered by the agreement performed after a date specified in the agreement. Effective for agreements or modifications to an agreement executed on or after January 1, 1960, this state may make coverage retroactive for 5 years preceding the year in which the agreement or modification is executed, but not earlier than January 1, 1956.

(2) That all services which constitute employment as defined in section 2 and which are performed in the employ of this state by employees of this state, except for those services which have been specifically excluded, shall be covered by the agreement.

(3) That services that do any of the following are covered in the agreement:

(i) Constitute employment as defined in section 2, except for those services that have been specifically excluded.

(ii) Are performed in the employ of a political subdivision of this state.

(iii) Are covered by a plan for extending the benefits of title II of the social security act, 42 U.S.C. 401, 402-405, 406-410, 411-418, 420-423, 424a-426i, and 427-433, which is in conformity with the terms of the agreement and has been approved by the department under section 8.

(4) That as modified, the agreement shall include all services described in either subdivision (2) or subdivision (3) that are performed by individuals to whom section 218(c)(3)(b) of title II of the social security act, 42 U.S.C. 418, applies, and shall provide that the service of that individual shall continue to be covered by the agreement if the individual thereafter becomes eligible to be a member of a retirement system.

(5) That as modified, the agreement shall include all services described in either subdivision (2) or subdivision (3) that are performed by individuals in positions covered by a retirement system for which the governor or an official delegated by the governor has issued a certificate to the secretary of health and human services pursuant to section 21(b).

(b) For purposes of this act and pursuant to section 218(d)(6) of title II of the social security act, 42 U.S.C. 418,

each of the following retirement systems shall be considered as a separate retirement system for the state:

(1) The state employees' retirement system established under the state employees' retirement act, Act No. 240 of the Public Acts of 1943, as amended, being sections 38.1 to 38.47 of the Michigan Compiled Laws. However, at the discretion of the appropriate governing body, the employees of the Michigan technological university who are members of the state employees' retirement system may be considered a separate coverage group.

(2) The Michigan public school employees' retirement system, established under the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1407 of the Michigan Compiled Laws, except as follows:

(i) At the discretion of the appropriate governing body, employees of Ferris state university and employees of Michigan technological university who are members of the Michigan public school employees' retirement system may be separate coverage groups, respectively.

(ii) At the discretion of the state board of education, employees of eastern Michigan university, central Michigan university, northern Michigan university, and western Michigan university may be 1 coverage group, or the employees of each such institution may be made a separate coverage group.

(iii) Employees of junior colleges or community colleges shall be considered employees of the public school districts or community college districts operating the junior colleges or community colleges and shall be included in the coverage group for employees of public school districts under the Michigan public school employees' retirement system.

(3) Employees of the commission of agriculture.

(4) Employees of the regents of the university of Michigan. However, at the discretion of the board of regents, the 2 retirement systems maintained by the university of Michigan may be regarded as separate coverage groups.

(5) Any other retirement systems presently maintained and administered by a political subdivision of this state shall be considered to constitute separate retirement systems or coverage groups.

(6) Exclusive of those employees expressly excluded under the social security act, chapter 531, 49 Stat. 620, the municipal employees' retirement system established under the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws. However, upon action of the governing body of the municipal employees' retirement system, employees of the participating municipalities may be regarded as constituting separate retirement systems or coverage groups.

(7) The probate judges' retirement system established under the probate judges retirement act, Act No. 165 of the Public Acts of 1954, as amended, being sections 38.901 to 38.933 of the Michigan Compiled Laws.

(8) The judges' retirement system established under the judges' retirement act, Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.831 of the Michigan Compiled Laws.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955 ;-- Am. 1957, Act 161, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 199, Imd. Eff. Apr. 21, 1958 ;-- Am. 1961, Act 83, Eff. Sept. 8, 1961 ;-- Am. 1987, Act 161, Imd. Eff. Nov. 5, 1987

### 38.854 Extension of social security; joint action with other states.

Sec. 4.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health, education, and welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under section 5 if they were covered by an agreement made pursuant to section 3, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of section 3 and other provisions of this act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955

### 38.855 Employee contributions required.

Sec. 5.

Every employee of the state, including public school employees as defined under section 2 (c) of this act, whose services are covered by an agreement entered into under section 3 shall be required to pay for the period of such coverage, into the contribution fund established by section 13, at such time or times as the secretary of health, education, and welfare may by regulation prescribe, amounts equivalent to the sum of the taxes which would be imposed under the federal insurance contributions act if the services of employees covered by this agreement constituted employment as defined in such act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955 ;-- Am. 1957, Act 161, Eff. Sept. 27, 1957

**38.856 Employee contributions; payroll deduction.**

Sec. 6.

The contribution imposed by section 5 shall be collected by the state treasurer by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution. The contributions so collected shall be turned over to the contribution fund established under section 13 of this act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1961, Act 83, Eff. Sept. 8, 1961

**38.857 Employee contributions; adjustments, refunds.**

Sec. 7.

If more or less than the correct amount of the contribution imposed by section 5 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made in such manner and at such times as the department shall prescribe.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

**38.858 Political subdivision; submission of plan for extension of social security benefits; requirements, approval.**

Sec. 8.

Each political subdivision of the state is hereby authorized to submit for approval by the department a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to employees of such political subdivision. Such plan shall be made effective on a date specified therein. Each such plan, and any amendment thereof, shall be approved by the department if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the department, except that no such plan shall be approved unless—

(a) It is in conformity with the requirements of title II of the social security act and with the agreement entered into under section 3;

(b) It provides that all services which constitute employment and are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan. The plan, however, may exclude from coverage certain services as provided by subsection (b) of section 2 of this act as amended and/or services performed by individuals to whom section 218 (c) (3) (c) of title II of the social security act is applicable;

(c) It specifies the source or sources from which the funds necessary to make the payments required by section 9,

by subsection (a) of section 11, and by section 12 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) It provides that the political subdivision shall perform such services as are required for the proper operation of the plan;

(e) It provides that the political subdivision will make such reports, in such form and containing such information, as the department may from time to time require, and comply with such provisions as the department or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(f) It authorizes the department to terminate the plan in its entirety, in the discretion of the department, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the department and may be consistent with the provisions of the social security act:

(g) Provided, That the boards of supervisors shall have power and they are hereby authorized at any meeting thereof legally held to provide social security coverage as provided under this act for county employees of their respective counties, and of the several offices, boards and departments thereof including the board of county road commissioners.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955

### 38.859 Political subdivision; plan to provide for appropriations to contribution fund.

Sec. 9.

Each plan made under section 8 shall provide that the political subdivision will appropriate to the contribution fund created under section 13 of this act for each year that the plan is in effect an amount equal to the subdivision's share of the cost of administration of this act by the department, such amount to be not greater than 5 per centum of the contributions made by the subdivision under the requirements of section 11.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.860 Nonapproval of plan; notice, hearing; review by supreme court.

Sec. 10.

The department shall not finally refuse to approve a plan submitted by a political subdivision under section 8, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. The findings of fact made by the department acting within its power shall, in the absence of fraud, be conclusive, but the Michigan supreme court shall have power to review all questions of law involved in any such proceedings of the department: Provided, That application for such review be made by the aggrieved political subdivision within such time after a final determination by the department, as may be prescribed by statute or rule of said court.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.861 Political subdivision; payments into contribution fund.

Sec. 11.

(a) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, created under section 13, with respect to wages at such time or times as the department may by

regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the department under section 3, and for the purpose of this subsection, the amounts severally due on behalf of the state and of such other employers may be determined in accordance with section 218 (e) (2) of the federal social security act.

Contributions by employees.

(b) Every employee of a political subdivision required to make payments under subsection (a) of this section, whose services are covered by an approved plan, shall be required to pay for the period of such coverage to the political subdivision at such time or times as the secretary of health, education and welfare may by regulation prescribe, amounts equivalent to the sum of the taxes which would be imposed under the federal insurance contributions act if the services of employees covered by this agreement constituted employment as defined in such act. Such liability shall arise in consideration of the employee's retention in, or entry upon, employment after enactment of this act. The political subdivision is authorized to deduct the amount of such contributions from the wages of such employee as and when paid.

Judges' retirement system.

With respect to the judges' retirement system established under Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.830 of the Compiled Laws of 1948:

Contributions by judges.

(1) For each judge who is a member of the judges' retirement system, his social security taxes retroactive from the date of the social security agreement covering such judge to January 1, 1956, or to the date of his entry into the judges' retirement system, whichever is later, shall be paid by the participating judge. For each judge who is not a member of the judges' retirement system, his social security taxes retroactive from the date of the social security agreement covering such judge to January 1, 1956, or to the date upon which he assumed the duties of judge, whichever is later, shall be deducted from his first payroll check following the date of the social security agreement.

All social security taxes upon the judge subsequent to the social security date shall be paid as provided in section 5 of Act No. 161 of the Public Acts of 1957, as amended, being section 38.855 of the Compiled Laws of 1948, and shall be in addition to any contributions provided for in this subsection (b), as amended.

Employer's social security taxes.

(2) The employer's social security taxes covering members of the judges' retirement system, except judges of the recorder's court and common pleas court of Detroit, shall be paid by the state. The employer social security taxes for judges of the recorder's court and common pleas court of Detroit and judges who are not members of the judges' retirement system shall be paid by the political entity or entities from which the judge receives any part of his salary.

Payment of contributions, adjustment.

(c) Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision under subsection (a). Failure to deduct such contributions shall not relieve the employee or employer of liability therefor. If more or less than the correct amount of the contribution imposed by subsection (b) is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impractical, shall be made in such manner and at such times as the political subdivision shall prescribe.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1955, Act 39, Imd. Eff. Apr. 21, 1955 ;-- Am. 1957, Act 161, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 199, Imd. Eff. Apr. 21, 1958 ;-- Am. 1964, Act 25, Imd. Eff. Apr. 29, 1964 ;-- Am. 1969, Act 251, Imd. Eff. Aug. 11, 1969

### 38.862 Delinquent payments; recovery with interest from political subdivision.

Sec. 12.

Delinquent payments due under section 11(a), with interest at a rate established by the department, but not to exceed the interest rate required under federal law to be paid by the state on delinquent social security taxes, may be recovered in an action in the circuit court against the political subdivision liable for the payment, or shall at the request of the department be deducted from any other money payable to the political subdivision by any department or agency of the state.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1984, Act 313, Eff. Mar. 29, 1985

**38.863 Contribution fund; establishment; deposits.**

Sec. 13.

There is established in the state treasury a special fund to be known as the contribution fund. The fund shall consist of and there shall be deposited in the fund all of the following:

(a) All contributions, interest, and penalties collected under sections 5, 8, 10, and 11.

(b) All money appropriated under this act.

(c) Any property or securities acquired through the use of money belonging to the fund.

(d) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other money received for the fund from any other source. All money received in the fund under this section shall be mingled and undivided, except as provided in section 14. Subject to the provisions of this act, the department is vested with full power, authority, and jurisdiction over the fund, including all money and property or securities belonging to the fund, and may perform any and all acts whether or not specifically designated, which are necessary to the administration of the fund and are consistent with the provisions of this act. Interest earnings on cash balances shall not be deposited in the fund.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951 ;-- Am. 1980, Act 484, Imd. Eff. Jan. 20, 1981

**38.864 Contribution fund; administrative account, establishment, deposits.**

Sec. 14.

There shall be established within the contribution fund a separate account to be known as the administrative account. This account shall consist of, and there shall be deposited therein, all moneys received under sections 9 and 18. All moneys received in the administrative account shall be mingled and undivided.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

**38.865 Contribution fund; segregation; withdrawals.**

Sec. 15.

The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for (a) payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 3; (b) payment of refunds provided for in section 7 of this act; (c) the expenses of administration of this act; and (d) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality, including overpayments of their share of the cost of administration of this act made under section 9.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

**38.866 Contribution fund; payments to secretary of treasury.**

Sec. 16.

From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts as are provided under the agreement entered into under section 3 and the social security act, at such time or times as the department directs.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.867 Contribution fund; administration.

Sec. 17.

The treasurer of the state shall be ex-officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the department and shall pay all warrants drawn upon it in accordance with the provisions of this act and with such regulations as the department may prescribe pursuant thereto.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.868 Annual appropriation to contribution fund for payments to secretary of treasury.

Sec. 18.

There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under sections 5, 11 and 12, to be available for the purposes of section 15 and section 16 until expended, such additional sums as are found to be necessary in order to make the payments to the secretary of the treasury of the United States which the state is obligated to make pursuant to the agreement entered into under section 3.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.869 Appropriation of all contributions to contribution fund.

Sec. 19.

For the purpose of administering the provisions of this act, there are hereby appropriated to the department all contributions made to the contribution fund under section 9 and there is authorized to be appropriated from the general fund for each fiscal year an amount necessary to pay the state's proportionate share of the cost of administration of this act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

### 38.870 Rules and regulations.

Sec. 20.

The department shall make and publish such rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

**History:** 1951, Act 205, Imd. Eff. June 14, 1951

**38.871 State employees' retirement system; referendum on coverage; petition; conduct; notice; supplemental statement; governor's certificate.**

Sec. 21.

(a) With respect to employees of the state who are members of the state employees' retirement system created by Act No. 240 of the Public Acts of 1943, as amended, the regents of the university of Michigan, the state board of agriculture, public school employees who are members of the retirement system created by chapter 1 of Act No. 136 of the Public Acts of 1945, as amended, the probate judges who are members of the probate judges' retirement system created by Act No. 165 of the Public Acts of 1954, as amended, and the judges who are members of the judges' retirement system created by Act No. 198 of the Public Acts of 1951, as amended, the governor is empowered to authorize a referendum upon the request of the respective boards administering the retirement systems for such coverage group. With respect to the employees of any political subdivision, including a school district of the first class whose employees are members of the retirement system created by chapter 2 of Act No. 136 of the Public Acts of 1945, as amended, he shall authorize a referendum only upon joint petition of the governing body of such political subdivision or school district of the first class together with the governing body of the retirement system in which such employees have membership. In lieu of the governing body of the retirement system in which such employees have membership and/or if there is no such retirement system governing body, there may be substituted as joint petitioner with the governing body of such political subdivision a petition signed by not less than 20% of the employees in positions under consideration for old-age and survivors insurance coverage.

The referendum shall be conducted in accordance with the provisions of section 218 (d) (3) of title II of the social security act, by the retirement system governing body, or, if no such retirement system governing body, then by the governing body of the political subdivision under the supervision of the governor or any agency or individual designated by him on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this act: Provided, That in the case of a retirement system that is part of the charter of the political subdivision, the plan shall be agreed to by action of the governing body of the political subdivision and by referendum of the employees as herein provided, before submission to the electorate.

The notice of referendum required by section 218(d)(3)(c) of title II of the social security act to be given to employees shall be accompanied by, or shall, not less than 40 days prior to the referendum, be supplemented by a statement in such manner, form and detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject if their services are included under an agreement under this act. In case a 90 day period after notice of referendum shall lapse before changes in a retirement system shall have been enacted or approved as above provided, then the date of referendum shall be automatically extended to not less than 40 days after such enactment or adoption.

(b) Upon receiving evidence satisfactory to him that, with respect to any such referendum, the conditions specified in section 218(d)(3) of title II of the social security act and the conditions specified in this act, as amended, have been met, the governor or an official delegated by him shall so certify to the secretary of health, education, and welfare.

**History:** Add. 1955, Act 39, Imd. Eff. Apr. 21, 1955 ;-- Am. 1957, Act 161, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 199, Imd. Eff. Apr. 21, 1958 ;-- Am. 1961, Act 83, Eff. Sept. 8, 1961
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.

## PROBATE JUDGES RETIREMENT ACT

### Act 165 of 1954

38.901-38.933 Repealed. 1976, Act 324, Imd. Eff. Dec. 8, 1976;—1992, Act 234, Eff. Mar. 31, 1993.

**Compiler's Notes:** Sec. 16 was amended by, and Secs. 16a and 16b were added by, Act 11 of 1993, effective March 31, 1993.

# MICHIGAN LEGISLATIVE RETIREMENT SYSTEM ACT

## Act 261 of 1957

AN ACT for the creation, maintenance, and administration of a legislative members' and presiding officers' retirement system within the legislature; to provide retirement allowances to the participants of the retirement system, and survivors' allowances and other benefits to their beneficiaries upon death; to exempt those allowances and benefits from certain taxes and legal processes; to establish certain funds in connection with the retirement system; to authorize and make appropriations for the retirement system; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; and to prescribe penalties and provide remedies.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

*The People of the State of Michigan enact:*

### 38.1001 Retirement system; creation.

Sec. 1.

A retirement system to establish a means of providing retirement allowances, survivors' allowances, and other benefits for members and their survivors and other beneficiaries, is created.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1002 Michigan legislative retirement system; name.

Sec. 2.

The retirement system created by section 1 shall be known as the "Michigan legislative retirement system" and all affairs and business of the system shall be transacted in such name.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1003 Construction of terms.

Sec. 3.

For the purposes of this act the words specified in any section or sections shall have the meanings set forth in such section or sections, unless different meanings are plainly indicated by their context.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1004 “Retirement system” defined.

Sec. 4.

"Retirement system" means the Michigan legislative retirement system.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1005 Board; definition.

Sec. 5.

"Board" means the board of trustees of the system.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1006 “Member” defined.

Sec. 6.

(1) Except as otherwise provided in subsection (2), "member" means any of the following:
(a) A legislator of this state.
(b) The secretary of the senate who served not less than 6 months before January 1, 1979, and for not less than 3 months after January 1, 1979.
(c) The clerk of the house who served not less than 6 months before January 1, 1979, and for not less than 3 months after January 1, 1979.
(d) The lieutenant governor.
(2) Member does not include any of the following:
(a) An individual who elects not to participate in the retirement system under section 18.
(b) An individual who first becomes a legislator or lieutenant governor on or after March 31, 1997.
(c) An individual who elects to terminate membership under section 61 and who, but for that election, would otherwise be eligible for membership in Tier 1 under section 18.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1979, Act 52, Imd. Eff. July 7, 1979 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1981, Act 185, Imd. Eff. Dec. 23, 1981 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:“Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”

### 38.1007 Repealed. 1981, Act 123, Imd. Eff. July 23, 1981.

**Compiler's Notes:** The repealed section pertained to definitions.

### 38.1007a “Direct rollover” and “distributee” defined.

Sec. 7a.

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

distributee.

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

**History:** Add. 1995, Act 175, Imd. Eff. Oct. 17, 1995

### 38.1008 Repealed. 1981, Act 123, Imd. Eff. July 23, 1981.

**Compiler's Notes:** The repealed section pertained to definitions.

### 38.1008a Definitions.

Sec. 8a.

(1) 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, that 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 that 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.

(2) 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.

(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.

(3) "Internal revenue code" means the United States internal revenue code of 1986.

**History:** Add. 1995, Act 175, Imd. Eff. Oct. 17, 1995 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002 ;-- Am. 2008, Act 355, Imd. Eff. Dec. 23, 2008

## 38.1009 “Salary” defined.

Sec. 9.

(1) "Salary" means the compensation, common to all legislators, exclusive of travel allowance, paid by the state for 1 year of service as a legislator. A member shall contribute to the retirement system based on the percentage applied to that salary.

(2) For purposes of section 23, salary also includes an additional 2% through December 30, 1986, and 4% beginning December 31, 1986, compounded annually and added for each year or portion of a year that expires after the member terminates service and before the member retires, of the member's greatest salary determined pursuant to subsection (1) received in 1 calendar year. This subsection only applies to a member who first becomes a member on or before January 1, 1995, and whose service terminates on or after December 1, 1978.

(3) For purposes of section 23, for a member who left service before December 1, 1978, salary also includes an additional 2% for each year beginning January 1, 1979 through December 30, 1986 and 4% beginning December 31, 1986, compounded annually and added for each year or portion of a year that expires after the member terminates service and before the member retires, of the member's greatest salary determined pursuant to subsection (1) received in 1 calendar year.

(4) For purposes of section 23, salary also includes an amount equal to the greatest amount of additional compensation received in 1 calendar year as a result of being in a leadership position, divided by 5, and then multiplied by the number of years or portion of a year, not to exceed 8, in which the member was in a leadership position and received additional compensation. Before a member who first becomes a member on or before January 1, 1995, may have the additional compensation included in salary under this subsection, the member shall pay to the retirement system a sum equal to 9% of the total additional compensation received. Before a member who first becomes a member after January 1, 1995, may have the additional compensation included in salary under this subsection, the member shall pay to the retirement system a sum equal to 7% of the total additional compensation received.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1988, Act 512, Imd. Eff. Dec. 29, 1988 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

## 38.1010 Repealed. 1981, Act 123, Imd. Eff. July 23, 1981.

**Compiler's Notes:** The repealed section defined “military service.”

## 38.1011 “Service” defined; election to receive military service credit; effect of membership in retirement system.

Sec. 11.

(1) "Service" means the period beginning on January 1 of the year in which the member took office or on the date of the oath of office in the case of a special election, and ending on December 31 of the term to which the member was elected; on the date of termination of service; or the date of death in office, whichever occurs first. Legislative service used to qualify for and receive a retirement allowance under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, shall not be credited as service for the purpose of this act. A member who qualifies under section 6(b) or (c) may choose to have service credited under this act if the service would otherwise have qualified as service under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, or if the service was to the state before 1943.

(2) A member who has satisfied the requirements of section 23(1)(a) and who was drafted, enlisted, inducted, or commissioned into active duty with the armed forces of the United States government may elect to receive service credit for not more than 2 years of active duty upon proof of the service having been rendered and upon request and payment to the retirement system of an amount equal to 5% of the member's salary for the calendar year in

which payment is made multiplied by the years including any fraction of a year of service that the member elects to purchase up to the maximum. A deferred vested member or retirant who has satisfied the requirements of section 23(1)(a) and who was drafted, enlisted, inducted, or commissioned into active duty with the armed forces of the United States may elect to receive service credit for not more than 2 years of active duty upon proof of the service having been rendered. A deferred vested member or retirant who is electing military service credit under this subsection shall pay an amount equal to 5% of the salary of a member who is serving at the time payment is made multiplied by the number of years including any fraction of a year of service for which the deferred vested member elects to receive credit. Service shall not be credited under this subsection if it is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction shall not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve.

(3) Membership in the retirement system created under this act shall not disqualify an employee of a political subdivision of this state from membership in a pension or retirement system established in the political subdivision of this state by reason of the compensation the employee receives from the political subdivision. Membership in the retirement system created under this act shall not affect the benefits to which a member, deferred vested member, retirant, or beneficiary may be entitled under the retirement system established in the political subdivision.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 53, Eff. Sept. 13, 1958 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1979, Act 52, Imd. Eff. July 7, 1979 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1981, Act 185, Imd. Eff. Dec. 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1988, Act 512, Imd. Eff. Dec. 29, 1988 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

### 38.1012 “Retirement allowance” defined.

Sec. 12.

"Retirement allowance" means a series of equal monthly payments payable at the end of each calendar month to a person while he or she is a retirant. The first payment shall be prorated for any fraction of a month from the date of retirement to the end of the first month, but a deduction from the regular monthly payment shall not be made for any fraction of a month remaining at the time of the retirant's death.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987

### 38.1013 “Retirant” defined.

Sec. 13.

"Retirant" means a person receiving an annual retirement allowance from the retirement system.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1013a “Survivor,”“eligible child,” and “surviving spouse” defined.

Sec. 13a.

(1) "Survivor" means the eligible surviving spouse or eligible child or children of a member, deferred vested member, or retirant.

(2) "Eligible child" means an unmarried child of a member, deferred vested member, or retirant who is:

(a) Under 18 years of age.

(b) Over 18 years of age with a mental or physical disability that precludes engaging in any gainful occupation.

(c) Over 18 years of age and regularly attending high school or an accredited institution of higher learning until becoming 25 years of age or no longer regularly attending school, whichever first occurs.

(3) "Surviving spouse" means the person to whom a member, deferred vested member, or retirant is legally married at the time of his or her death.

**History:** Add. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1998, Act 78, Imd. Eff. May 4, 1998 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

### 38.1014 “Refund beneficiary” defined.

Sec. 14.

"Refund beneficiary" means the 1 or more persons named by a member, deferred vested member, or retirant in writing and filed in the office of the retirement system to receive any refund of a member, deferred vested member, or retirant's contributions upon his or her death if a survivor's retirement allowance is not payable under this act. In the absence of a valid beneficiary designation, refund payment shall be made to the executor or personal representative of the deceased for the benefit of the estate.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

### 38.1015 Actuarial tables; definition.

Sec. 15.

"Actuarial tables" means such tables as are from time to time adopted by the board for computing allowances based upon the experience of the system as recommended by the actuary.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971

### 38.1016 Prescribed rate of interest; definition.

Sec. 16.

"Prescribed rate of interest" means such rate or rates as shall from time to time be prescribed by the board.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1968, Act 99, Imd. Eff. June 7, 1968

### 38.1017 “Fiscal year” defined.

Sec. 17.

"Fiscal year" means the fiscal year of the state as described in section 1 of Act No. 116 of the Public Acts of 1887, as amended, being section 21.91 of the Michigan Compiled Laws.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1979, Act 52, Imd. Eff. July 7, 1979

### 38.1017a "Deferred vested member" defined.

Sec. 17a.

"Deferred vested member" means a member who left the legislature having satisfied the requirements of section 23(1)(a), but without having attained 55 years of age.

**History:** Add. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1981, Act 185, Imd. Eff. Dec. 23, 1981

### 38.1017b "Leadership position" defined.

Sec. 17b.

"Leadership position" means a position held by a member of the legislature who, in addition to salary common to all legislators, receives supplemental salary attributable to holding that position as determined by the state officers compensation commission under section 12 of article IV of the state constitution of 1963 and 1968 PA 357, MCL 15.211 to 15.218.

**History:** Add. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

### 38.1017c "Legislator" defined.

Sec. 17c.

"Legislator" means a person duly elected and serving in the Michigan house of representatives or the Michigan senate.

**History:** Add. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1017d "Tier 1" and "Tier 2" defined.

Sec. 17d.

(1) "Tier 1" means the retirement plan available under this act to a member who first became a legislator or lieutenant governor before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

(2) "Tier 2" means the retirement plan established pursuant to the internal revenue code that is available to qualified participants under sections 61 to 80.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1018 Legislator or lieutenant governor; membership in retirement system; notice of election not to participate; refund of contributions; effect of notice; rescission of notice; contributions and interest; eligibility on or after March 31, 1997.**

Sec. 18.

(1) Except as otherwise provided in section 23b, a person who first becomes a legislator or lieutenant governor before March 31, 1997 shall become a member in and be subject to the Tier 1 retirement system beginning upon the date the person becomes a legislator or lieutenant governor, unless within 90 days after that date the person has filed with the board a written notice of election not to participate in the retirement system. A notice not to participate in the retirement system filed within the 90-day period may be withdrawn within the 90-day period. A refund of all contributions made during the 90-day period shall be made to a legislator or lieutenant governor who elects not to participate in the retirement system.

(2) After the expiration of the 90-day period, a person electing not to participate in the retirement system shall be ineligible to participate in and to receive benefits from the retirement system. A person who files with the board before January 30, 1972, a written notice of election not to participate in the retirement system, and who is still a legislator or lieutenant governor, may become a member in and be subject to the retirement system upon filing with the board before January 1, 1979, a written rescission of his or her notice of election not to participate in the retirement system. The person then shall become a member and shall be subject to this act. Upon making a contribution to the retirement system of an amount equal to the contributions the person would have made as a member from September 27, 1957, or the date the person became a legislator or lieutenant governor, if after September 27, 1957, to the date the person became a member, with interest on the amount at the rate of 6% per annum compounded annually until paid, the person shall be entitled to receive credit for service as a member before the date of the rescission of the waiver, on, before, and after January 1, 1957, the same as the person would have received if the person had never executed the written notice of election not to participate in the retirement system. The accrued contributions shall be made in full before the expiration of the term for which the member is currently elected or not later than December 1, 1980, whichever is later, otherwise credit for service before the date of participation shall not be granted.

(3) An individual who first becomes a legislator or lieutenant governor on or after March 31, 1997, is eligible to be a qualified participant in Tier 2 subject to sections 61 to 80.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1961, Act 167, Eff. Sept. 8, 1961 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1019 Repealed. 1981, Act 123, Imd. Eff. July 23, 1981.**

**Compiler's Notes:** The repealed section subjected participants to survivors' retirement allowances.

**38.1020 Members' retirement fund; creation; purpose; computing retirement reserves for retirement allowances; financing; state's appropriations for current service, accrued service, and retirement allowances; allocation of employer contributions.**

Sec. 20.

(1) The members' retirement fund is created. The fund shall accumulate reserves for the payment of retirement allowances to retired members and deferred vested members as provided in this act. Upon the basis of mortality and other experience tables, and the prescribed rate of interest, as the board shall adopt, the actuary shall compute annually the amount of retirement reserves for retirement allowances being paid to retirants and covering service rendered and to be rendered by members. It is the intention of this act that the retirement reserves shall be financed

by other revenues to the fund and that annual appropriations shall be determined pursuant to subsections (2), (3), and (4).

(2) The state's appropriation for current service shall be an amount that, if paid annually during the future service of members, will be sufficient to provide the reserves at the time of the members' retirement, after allowing for the net contributions to the members' savings fund to be made by the members, for the future service portions of the retirement allowances to which the members might become entitled.

(3) The state's appropriation for members' accrued service shall be an amount that if paid annually over a period of years determined by the board, but not to exceed 50 years, will amortize at the prescribed rate of interest the unfunded reserves for the accrued service portions of the retirement allowances to which the members may become entitled.

(4) The state's appropriation for retirement allowances being paid from the members' retirement fund shall be an amount that if paid annually over a period of years determined by the board, but not to exceed 50 years, will amortize at the prescribed rate of interest the unfunded reserves for the retirement allowances.

(5) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit preservation act, the benefits that are required to be paid from that fund shall be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that shall be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** In subsection (5), the reference to “public employee retirement benefit preservation act” evidently should read “public employee retirement benefit protection act” (MCL 38.1681 et seq.).

### 38.1021 Members' savings fund; creation; purpose; contributions; rate; additional contributions; payroll deductions; transfer of contributions upon retirement or death.

Sec. 21.

(1) The members' savings fund is created in the retirement system. The retirement system shall accumulate in the members' savings fund the contributions made by members toward the financing of their retirement allowances, shall make transfers of those contributions from the members' savings fund to the members' retirement fund, and shall make refunds of contributions from the members' savings fund as provided in this act. Except as otherwise provided in this subsection, a member who first becomes a member on or before January 1, 1995, shall make contributions to the members' savings fund of 7% of each payment of salary received by the member for service as a member, but not for a period exceeding 20 years. Except as otherwise provided in this subsection, a member who first becomes a member after January 1, 1995, shall make contributions to the members' savings fund of 5% of each payment of salary received by the member for services as a member. Beginning on the effective date of section 36a, member contributions required under this subsection are suspended unless reinstated by the board under section 36a.

(2) During the period beginning on January 1, 1999 and ending on December 31, 2000, a member who first became a member after December 1, 1994 and on or before January 1, 1995, shall make additional member contributions to the members' savings fund of 4% of each payment of salary received by the member for services as a member.

(3) The member contributions required by this section shall be made by payroll deductions. Each member is considered to consent and agree to the payroll deductions as a condition of membership in the retirement system.

(4) Upon the retirement of a member, his or her accumulated contributions shall be transferred to the members' retirement fund. Upon the death of a member, if a survivor's retirement allowance becomes payable on account of the member's death, his or her accumulated contributions shall be transferred to the survivors' retirement fund.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**38.1021a Member contributions picked up by state.**

Sec. 21a.

The state shall pick up the member contributions required by sections 21, 22, 22c, and 50a for all compensation earned after December 31, 1986. Contributions picked up shall be treated as employer contributions in determining tax treatment under the internal revenue code. The state shall pay these member contributions from the same source of funds that is used in paying compensation to the member. The state may pick up these contributions by a reduction in the cash salary of the member. Member contributions picked up shall be treated for all other purposes in the same manner and to the same extent as member contributions made before the date picked up.

**History:** Add. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**38.1022 Survivors' retirement fund; creation; purpose; contributions; rate; payroll deductions; computing retirement reserves for retirement allowances; financing; state's appropriations for survivors' retirement allowances.**

Sec. 22.

(1) The survivors' retirement fund is created in the retirement system. The retirement system shall accumulate in the survivors' retirement fund reserves for the payment of retirement allowances to survivors. The retirement system shall pay the survivor retirement allowances from the survivors' retirement fund. Except as otherwise provided in this subsection, each member shall make contributions to the survivors' retirement fund of 0.5% of each payment of salary received that is attributable to service performed on and after January 1, 1995. A member shall not make contributions to the survivors' retirement fund for more than 20 years. The contributions shall be made by payroll deductions and each member is considered to consent and agree to the deductions as a condition of membership in the retirement system. Beginning on the effective date of section 36a, member contributions required under this subsection are suspended unless reinstated by the board under section 36a.

(2) The board shall adopt mortality and other experience tables and the prescribed rate of interest. Upon the basis of those tables and the interest rate, the actuary shall compute annually the retirement reserves for retirement allowances being paid survivors, and to be paid survivors upon the deaths of members, deferred vested members, and retirants, as provided in this act. It is the intention of this act that the retirement reserves shall be financed by appropriations made by this state, determined pursuant to subsections (3), (4), and (5).

(3) The state's appropriation for survivors' retirement allowances to be paid upon the death of members, deferred vested members, and retirants shall be an amount that will provide the net reserves, after allowing for members' contributions to the survivors' retirement fund and transfers to be made to the fund from the members' savings fund, or other available funds for retirement allowances to be paid to survivors of members, deferred vested members, and retirants who will probably die during the next ensuing fiscal year.

(4) The state's appropriation for survivors' retirement allowances to be paid upon the death of retirants shall be an amount determined pursuant to the financing methods provided for in section 20(2) and (3).

(5) The state's appropriation for survivors' retirement allowances being paid from the survivors' retirement fund shall be an amount that if paid annually over a period of years to be determined by the board, but not to exceed 50 years, will amortize at the prescribed rate of interest the unfunded reserves for the retirement allowances.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**38.1022a Income fund; creation; purpose; interest, dividends, and other income; expenses.**

Sec. 22a.

(1) An income fund is created in the retirement system. The retirement system shall credit to the income fund all interest, dividends, and other income from the investment of retirement system assets and all other money for which there is no specific disposition provided in this act.

(2) The retirement board annually shall credit regular interest on the preceding year balances in the members' retirement fund, members' savings fund, survivors' retirement fund, grants and insurance revolving fund, and the health insurance fund. The retirement board shall charge to the income fund the interest credited to the funds under this subsection.

(3) The retirement system shall pay the expenses for the administration of the retirement system, exclusive of amounts payable as retirement allowances and other benefits provided in this act, from the income fund.

**History:** Add. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

### 38.1022b Prorating and allocating annual appropriations to retirement system.

Sec. 22b.

Annual appropriations of the state made pursuant to this act shall be prorated and allocated to the retirement system not less than quarterly. Payment of the amount allocated for each quarter shall be made not later than the forty-fifth day following the beginning of the quarter.

**History:** Add. 1987, Act 58, Imd. Eff. June 23, 1987

### 38.1022c Health insurance fund; creation; disposition; disbursement; contributions; payroll deductions; nonrefundable.

Sec. 22c.

(1) The health insurance fund is created in the retirement system. The retirement system shall deposit into the health insurance fund the member contributions for health benefits required by this section, subscriber co-payments, payments under section 79, regular interest from the income fund, and state appropriations. The retirement system shall disburse from the health insurance fund the premiums or portion of the premiums for dental, hospital, and medical coverage insurance as required by sections 50b and 79.

(2) Except as otherwise provided in this subsection, a member shall make contributions to the health insurance fund of 1% of each payment of salary received that is attributable to service performed on and after January 1, 1995. Beginning on the effective date of section 36a, a member who first became a member of Tier 1 on or before January 1, 1995 shall make contributions to the health insurance fund of 9% of each payment of salary received by the member for service as a member. Beginning on the effective date of section 36a, a member who first became a member of Tier 1 after January 1, 1995 shall make contributions to the health insurance fund of 7% of each payment of salary received by the member for service as a member. The increased contributions required under this subsection by the amendatory act that added section 36a will continue unless suspended by the board under section 36a. The contributions shall be made by payroll deductions and each member is considered to consent to the deductions as a condition of membership in the retirement system.

(3) Except as otherwise provided by this act, membership contributions to the health insurance fund are not refundable.

**History:** Add. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1023 Requirements for entitlement to retirement allowance; right to allowance; amount; recalculation of retirement allowance; election to defer receipt of retirement allowance; computation of retirement allowance; longevity allowance.**

Sec. 23.

(1) A member or deferred vested member who meets the following requirements shall be entitled to a retirement allowance:

(a) The member or deferred vested member qualifies under 1 of the following:

(i) Has not less than 8 years of service.

(ii) Has not less than 6 years of service, and has been elected, qualified, and seated not less than 4 times for full or partial terms if a member of the house or not less than 2 times if a member of the senate elected after November 7, 1966, or has not less than 6 years of service and has been elected, qualified, and seated not less than 2 times for full or partial terms as a member of the house and not less than 1 time as a member of the senate elected after November 7, 1966.

(iii) Effective January 1, 1987, has not less than 5 years of service and has been elected, qualified, and seated for a full or partial term not less than 3 times if a member of the house or not less than 2 times if a member of the senate, or not less than 1 time as a member of the house and not less than 1 time as a member of the senate.

(b) The member or deferred vested member has attained 55 years of age.

(c) The member or deferred vested member has filed with the board a written application for a retirement allowance that states the years of service, the highest salary received during the member's or deferred vested member's service before application, and the date the member or deferred vested member desires to be retired, which date shall be not more than 90 days after the execution and filing of the application.

(2) A member shall not be entitled to receive a retirement allowance provided for in this section or section 23d while serving as a legislator or lieutenant governor. Each person receiving benefits under this act consents and agrees as a condition of receiving the benefits that benefits of any nature shall not be paid while the person is a legislator or lieutenant governor.

(3) A deferred vested member who left service after December 31, 1974, and before January 1, 1979, and who becomes a retirant shall be entitled to an annual retirement allowance of 30% of the salary stated in the application for the first 8 years of service plus 3.75% for each of the next 8 years of service. A fraction of a year of service in excess of 8 years shall be prorated. If the retirant has less than 8 years of service but qualifies by the election method, the retirement allowance shall be that proportion of 30% that his or her years of service and fraction of a year of service bears to 8 years. Years of service listed in the application need not be consecutive but shall have been rendered before payment of the retirement allowance. Except as provided in section 23c, a retirement allowance shall not exceed 60% of the salary stated in the application.

(4) A member who retired after December 31, 1978 and before January 1, 1987, or a deferred vested member who left service after December 31, 1978 and before January 1, 1987, and becomes a retirant, shall be entitled to an annual retirement allowance of 32% of the salary stated in his or her application for the first 8 years of service plus 4% for each of the next 8 years of service. A fraction of a year of service in excess of 8 years shall be prorated. If the member or deferred vested member has less than 8 years of service but qualifies by the election method, the retirement allowance shall be that proportion of 32% that his or her years of service and fraction of a year of service bears to 8 years. Years of service listed in the application need not be consecutive, but shall have been rendered before payment of the retirement allowance. Except as provided in section 23c, a retirement allowance shall not exceed 64% of the salary stated in the application.

(5) A member who first becomes a member on or before January 1, 1995 and who retires after December 31, 1986, or a deferred vested member who first becomes a member on or before January 1, 1995, who leaves service after December 31, 1986, and who becomes a retirant, shall be entitled to an annual retirement allowance of 20% of the salary stated in his or her application for the first 5 years of service plus 4% for each of the next 11 years of service. A fraction of a year of service in excess of 5 years shall be prorated. Years of service listed in the application need not be consecutive, but shall have been rendered before payment of the retirement allowance. Except as provided in this subsection and section 23c, a retirement allowance shall not exceed 64% of the salary stated in the application. Effective January 1, 1987, however, a member who first becomes a member on or before January 1, 1995 and who has 16 or more years of service shall also be entitled to a longevity allowance of 1.0% of the member's salary for each year of service beyond 16 years but, except as otherwise provided in this subsection, not to exceed 20 years. Except as provided in this subsection and section 23c, the retirement allowance of a member entitled to a longevity allowance under this subsection shall not exceed 68% of the salary stated in the application. Beginning January 1, 1989, a member who first becomes a member on or before January 1, 1995, who has 20 or more years of service, and who meets the age and service requirements or service requirements to be eligible to receive a retirement allowance under this act shall be entitled to a longevity allowance of 1.0% of the member's salary for each year of service beyond 20 years.

(6) A member who first becomes a member on or after January 2, 1995 and who becomes a retirant under this act is entitled to an annual retirement allowance equal to the product of the following:

(a) The salary stated in his or her application.

(b) Years and fraction of a year of service.

(c) Three percent.

(7) A retirant who elects to purchase military service credit pursuant to section 11(2) shall have his or her retirement allowance recalculated to include the military service credit purchased pursuant to that section. The first payment of the recalculated retirement allowance shall be made effective with the first check after the recalculation is made.

(8) The retirement allowance of a retirant who, on January 1, 1987, satisfied the conditions required by section 9(3) shall have his or her retirement allowance recalculated to reflect the increase in salary for those years permitted by section 9(3) before the member became a retirant.

(9) Within 30 days after becoming 55 years of age, a deferred vested member may elect to defer receipt of the retirement allowance to which the member is entitled under this act to a date certain, not to exceed 70-1/2 years of age. Except as otherwise provided in this subsection, at the date the member designates to begin receipt of his or her retirement allowance, the member's retirement allowance shall be actuarially recomputed to reflect the member's age and life expectancy at initial receipt of the deferred retirement allowance. Upon request of the deferred vested member who elects to begin receiving his or her retirement allowance, the retirement board may pay to the member a lump sum payment of an amount equal to the sum of the retirement allowance that was deferred pursuant to this subsection. The retirement board shall not actuarially recompute the member's retirement allowance upon payment of a lump sum under this subsection. If a deferred vested member has elected to defer receipt of his or her retirement allowance under section 23(9)(a) and subsequently dies before retirement, 100% of his or her deferred benefit shall be paid in accordance with a beneficiary designation that the member shall have filed with the board.

(10) Notwithstanding subsection (1), a member or deferred vested member may retire with a retirement allowance computed according to the applicable provisions of this section if all of the following apply:

(a) The member or deferred vested member files a written application with the retirement board stating a date, not less than 30 nor more than 90 days after the execution and filing of the application, on which the member or deferred vested member desires to retire.

(b) On the last day of the month immediately preceding the retirement allowance effective date stated in the application, the member's or deferred vested member's combined age and length of credited service is equal to or greater than 70 years and the member or deferred vested member is 50 years of age or older.

(11) A member who retires before January 1, 1987 or a deferred vested member who leaves service before January 1, 1987 and becomes a retirant shall, in addition to the retirement allowance calculated under subsection (3) or (4), be entitled to a longevity allowance if the retirant or deferred vested member has more than 16 years of service. The longevity allowance is 1.0% of the former member's salary stated in the application for each year of service beyond 16 years but, except as otherwise provided in this subsection, not to exceed 20. A member who retires before January 1, 1987 or a deferred vested member who leaves service before January 1, 1987 and becomes a retirant shall, in addition to the retirement allowance calculated under subsection (3) or (4), be entitled to a longevity allowance of 1.0% of the former member's salary stated in the application for each year of service beyond 20 years that was served after the member met the age and service requirements or service requirements to be eligible to receive a retirement allowance under this act. The retirement allowance of a retirant who satisfies the conditions under this subsection shall have his or her retirement allowance recalculated to reflect the longevity allowance for those years permitted by this subsection effective January 1, 1987 or the date of retirement, whichever is later. The application of the longevity allowance to the retirant's retirement allowance under this subsection shall be applied before the provisions of section 23c are applied to that retirement allowance. Except as provided in this subsection and section 23c, a retirement allowance shall not exceed 68% of the salary stated in the application.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1979, Act 52, Imd. Eff. July 7, 1979 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1988, Act 512, Imd. Eff. Dec. 29, 1988 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

### 38.1023a Repealed. 1974, Act 215, Eff. Dec. 31, 1974.

**Compiler's Notes:** The repealed section pertained to retirement upon attaining age 55.

**38.1023b Retirant or deferred vested member again becoming legislator or lieutenant governor; election to again become member; notice; conditions; nonpayment of retirement allowance; declining to again become member; exception.**

Sec. 23b.

(1) Notwithstanding section 18 and except as otherwise provided in subsection (4), if a retirant or a deferred vested member again becomes a legislator or lieutenant governor, the retirant or deferred vested member shall not again become a member unless within 30 days from the date of the beginning of the subsequent service he or she files with the board a written notice of election to again become a member and complies with this section. After the expiration of the 30-day period, a retirant or deferred vested member who again becomes a legislator or lieutenant governor who does not elect to again become a member is barred from again becoming a member during that term of office. During the 30-day period, the retirement allowance shall not be paid, but the contributions required by this act shall be deducted. The contributions shall be refunded if the legislator or lieutenant governor does not elect to again become a member.

(2) If the retirant or deferred vested member elects to again become a member, the subsequent membership in the retirement system shall be subject to the following conditions in addition to any other condition required of a member by this act:

(a) During the subsequent period of service as a legislator or lieutenant governor, payment of the retirement allowance shall not be made or accrued.

(b) The member shall repay to the retirement system all money received from the retirement system with interest at the rate of 6% per annum compounded annually before the expiration of 180 days of the term for which the member currently is elected. Failure to make the repayment within 180 days shall void the election to become a member.

(c) All prior applications for retirement shall be abrogated.

(d) The member's service credit shall be recalculated.

(3) If a retirant or deferred vested member again becomes a legislator or lieutenant governor and declines to again become a member, he or she shall not be entitled to a retirement allowance and payment of his or her retirement allowance shall not be made or accrued during his or her subsequent service. Upon termination of his or her subsequent service, payment of the retirement allowance shall be resumed effective as of the date of termination of the subsequent service without change because of the subsequent service.

(4) This section does not apply to a deferred vested member who is required to make an election under section 61.

**History:** Add. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1023c Increase of retirement allowance.**

Sec. 23c.

(1) After December 31, 1986, on January 1 of each year a retirement allowance attributable to a member who first becomes a member on or before January 1, 1995, shall be increased 4% compounded annually.

(2) Beginning January 1, 1995, each retirement allowance attributable to a member who first becomes a member after January 1, 1995, shall be increased each January 1. The amount of the annual increase shall be equal to 4% of the retirement allowance payable as of the retirement allowance effective date.

(3) A retirement allowance that begins after January 1 of the immediately preceding calendar year shall be increased under this section on a pro rata basis by the applicable percentage amount from the time the retirement allowance begins to the date of the increase.

**History:** Add. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Eff. Jan. 1, 1979 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**38.1023d Disabled member; retirement allowance; annual examination.**

Sec. 23d.

(1) A member who meets the service requirements of section 23(1)(a) but not the age requirements of section 23(1)(b), a member who does not meet the requirements of section 23(10)(b), or a deferred vested member may receive a retirement allowance if the board has received a certification by not less than 2 licensed physicians appointed by the board stating that the member or deferred vested member is disabled from engaging in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death, or can be expected to last for a continuous period of 12 months or more.

(2) A member or deferred vested member who is determined eligible to receive a retirement allowance under subsection (1) shall receive the retirement allowance applicable to that member or deferred vested member provided for in section 23(4), (5), or (6).

(3) A member who is currently receiving compensation as a legislator or lieutenant governor shall not receive a retirement allowance under this section.

(4) The board may provide for the examination by 1 or more licensed physicians designated by the board at least once a year of a person who is receiving a retirement allowance under this section during the continuance of the disability. The board shall not provide for an examination after the member attains 55 years of age.

**History:** Add. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

**38.1023e Supplemental payments for retirants or retirement allowance beneficiaries with retirement allowance effective date before January 1, 1979; future adjustments.**

Sec. 23e.

(1) Effective January 1, 1988, but before any of the increases provided by section 23c on or before January 1, 1988 are included, the monthly retirement allowance payable to a retirant or retirement allowance beneficiary and determined upon the date of retirement of the retirant whose retirement allowance effective date was before January 1, 1979 is supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| October 1, 1977 to December 31, 1978 | 10 |
| October 1, 1976 to September 30, 1977 | 11 |
| October 1, 1975 to September 30, 1976 | 12 |
| October 1, 1974 to September 30, 1975 | 13 |
| October 1, 1973 to September 30, 1974 | 14 |
| October 1, 1972 to September 30, 1973 | 15 |
| October 1, 1971 to September 30, 1972 | 16 |
| October 1, 1970 to September 30, 1971 | 17 |
| October 1, 1969 to September 30, 1970 | 18 |
| October 1, 1968 to September 30, 1969 | 19 |
| October 1, 1967 to September 30, 1968 | 20 |
| October 1, 1966 to September 30, 1967 | 21 |
| October 1, 1965 to September 30, 1966 | 22 |
| October 1, 1964 to September 30, 1965 | 23 |
| October 1, 1963 to September 30, 1964 | 24 |
| October 1, 1962 to September 30, 1963 | 25 |
| October 1, 1961 to September 30, 1962 | 26 |
| October 1, 1960 to September 30, 1961 | 27 |

October 1, 1959 to September 30, 1960 28

October 1, 1958 to September 30, 1959 29

October 1, 1957 to September 30, 1958 30

(2) The recalculated retirement allowance as supplemented by this section shall be the basis on which future adjustments to the allowance are calculated.

**History:** Add. 1987, Act 58, Imd. Eff. June 23, 1987

**38.1024 Survivor's retirement allowance; eligibility; duration, commencement, and rate; status of adopted child; payments to eligible child; effect of marriage or attainment of ineligible age; payment of survivor's retirement allowance as provided in written designation; division of survivor's retirement allowance among eligible survivors; receipt of entire survivor's retirement allowance by surviving spouse when eligible children become ineligible.**

Sec. 24.

(1) Unless otherwise provided by the member pursuant to this act, the surviving spouse of a deceased member, deferred vested member, or retirant having the service qualifications required by section 23 shall be entitled to receive a survivor's retirement allowance for life payable from the survivors' retirement fund. The survivor's retirement allowance shall be payable beginning on the day after the date of death of the member or deferred vested member, or beginning in the month after the month of death in the case of a retirant. If an eligible child or children also survive the member, deferred vested member, or retirant, and the child or children are under the care of the eligible surviving spouse, the survivor's retirement allowance shall begin as of the day after the date of death of the member or deferred vested member or the month after the month of death in the case of a retirant, without regard to whether the surviving spouse has attained 55 years of age. The benefits to an eligible child or children shall continue whether or not the surviving spouse remarries. If the eligible child or children, or any of them, are not under the care of the eligible surviving spouse, at the specific designation of the deceased member, deferred vested member, or retirant as provided in this act, a survivor's retirement allowance shall begin for the benefit of the eligible child or children as of the day after the date of death of the member or deferred vested member, or beginning in the month after the month of death in the case of a retirant. A deduction from the monthly survivor's retirement allowance shall not be made for any fraction of a month remaining at the time of a survivor's death or becoming ineligible.

(2) The survivor's retirement allowance shall be equal to 66-2/3% of the retirement allowance which the deceased member, deferred vested member, or retirant had earned on the date of death, as a member, deferred vested member, or retirant. If an eligible survivor, regardless of age, has in his or her care an eligible child or children of the deceased member, deferred vested member, or retirant, the survivor's retirement allowance shall be 75% of the retirement allowance, but when all the children have become ineligible, the survivor's retirement allowance shall be 66-2/3% of the retirement allowance.

(3) An adopted child of a member for the purposes of this act shall have the same status as a natural child of a member.

(4) If there is not a surviving spouse but an eligible child exists, or if an eligible child survives a surviving spouse, then the survivor's retirement allowance otherwise payable to the surviving spouse shall be paid in equal parts to each eligible child until the child becomes ineligible, and the total of the survivor's retirement allowance paid to any other child shall not be diminished because of the attainment of ineligible age, marriage, or death of an eligible child. The portion of the survivor's retirement allowance that was paid to a formerly eligible child who subsequently becomes ineligible shall be paid in equal parts among the remaining eligible children, if any, until no eligible children remain to be paid.

(5) Marriage or attainment of ineligible age, whichever occurs first, shall render a child of a member, deferred vested member, or retirant ineligible for further consideration in the payment of a survivor's retirement allowance or in the increase in the amount of the survivor's retirement allowance under this act.

(6) If the deceased member, deferred vested member, or retirant is survived by an eligible child or children who are not under the care of an eligible surviving spouse and if the deceased member, deferred vested member, or retirant has filed a written designation with the board, the survivor's retirement allowance or a part of it shall be paid to or for the benefit of the eligible child or children in the shares and in the manner as provided in the written designation. The deceased member, deferred vested member, or retirant may provide in the written designation that

payment of all or any part of the survivor's retirement allowance to a surviving spouse not having the care of all of the eligible children shall be deferred until the children become ineligible.

(7) If there is not a written designation by a member, deferred vested member, or retirant, and if the surviving spouse is not the biological parent of an eligible child or children, the survivor's retirement allowance shall be divided equally among the eligible survivors.

(8) Unless designated by a member, deferred vested member, or retirant, when an eligible child or all of the eligible children become ineligible, the surviving spouse at the time of the member, deferred vested member, or retirant's death shall receive the entire survivor's retirement allowance.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1979, Act 52, Imd. Eff. July 7, 1979 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 2006, Act 614, Imd. Eff. Jan. 3, 2007

### 38.1024a Remarriage of surviving spouse.

Sec. 24a.

The remarriage of a surviving spouse shall not render the surviving spouse ineligible to receive a survivor's retirement allowance described in section 24. A surviving spouse whose survivor's retirement allowance described in section 24 was terminated due to the surviving spouse's remarriage shall be eligible to receive that retirement allowance beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the survivor's retirement allowance attributable to any month beginning before the month of reinstatement under this section.

**History:** Add. 1986, Act 29, Imd. Eff. Mar. 10, 1986

### 38.1025 Retirement system as trust; board as fiduciary; nonapplicability to Tier 2 retirement plan.

Sec. 25.

(1) The retirement system shall be construed to be a trust, separate from all other entities, maintained for the purpose of securing payment of benefits to the members, deferred vested members, retirants, and their survivors and beneficiaries as provided in this act.

(2) The board is the fiduciary of the retirement system with the authority to control and manage the operation and administration of the retirement system in the manner provided by this act.

(3) This section does not apply to the Tier 2 retirement plan.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1026 Retirement system; board of trustees; membership; eligibility and terms; oath of office.

Sec. 26.

(1) The retirement system shall be administered by a board of trustees, consisting of 11 persons as follows:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed in the same manner as members of standing committees of the senate are appointed.

(c) Two retirants appointed by the speaker of the house of representatives and 2 retirants appointed by the senate

majority leader.

(d) One deferred vested member appointed by the speaker of the house of representatives and 1 deferred vested member appointed by the senate majority leader. If a deferred vested member serving on the board becomes a retirant during his or her term of office, he or she shall be entitled to serve the remainder of his or her term of office.

(e) One participant of Tier 2 who was a former member of Tier 1 appointed in 1999 by the senate majority leader and beginning in 2001 appointed alternately by the speaker of the house of representatives and the senate majority leader. However, if there is no participant of Tier 2 who meets the former member requirement of this subdivision, then 1 additional deferred vested member appointed in the manner prescribed in this subdivision.

(2) Only members of the retirement system are eligible to serve as members on the board of trustees except for the retirants and Tier 2 participant authorized under subsection (1). Board members appointed under subsection (1)(a) and (b) are appointed for 2-year terms. Board members appointed under subsection (1)(c) are appointed for 4-year terms. Board members appointed for terms beginning in 1999 under subsection (1)(d) are appointed for 2-year terms. Board members appointed for terms beginning in 2001 under subsection (1)(d) are appointed for 4-year terms. A board member appointed for a term beginning in 1999 under subsection (1)(e) is appointed for a 2-year term. Beginning in 2001, a board member appointed under subsection (1)(e) is appointed for a 4-year term.

(3) Each person, whether appointed as a trustee or becoming a trustee ex officio, shall take an oath of office before the secretary of state, clerk of the house, or secretary of the senate, and, upon taking the oath, qualifies as a trustee. The oath of office shall be as prescribed under section 1 of article XI of the state constitution of 1963.

(4) A member of the board of trustees serving as of December 31, 2010 shall continue to serve as a member until December 31, 2011. Beginning January 1, 2012, the board of trustees shall be composed of 11 members as indicated in this section and in the bylaws. Except as otherwise provided in this section, the 11 members of the board shall contain at least 4 members who are retirants, 2 members who are deferred former qualified participants, and at least 1 current member of Tier 2. If there are insufficient persons who qualify under this section and are willing to serve, then members shall be appointed as indicated in the bylaws.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002 ;-- Am. 2006, Act 614, Imd. Eff. Jan. 3, 2007

### 38.1027 First board of trustees; organizational meeting, election of officers.

Sec. 27.

The first board shall meet as soon as practicable after the enactment of this act, at Lansing, Michigan, for the purpose of organizing this system and shall, at that meeting, elect a chairman and a vice-chairman.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1028 Vacancy in trusteeship.

Sec. 28.

Beginning January 1, 2012, a vacancy in a trusteeship shall be filled as provided in the bylaws.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 2006, Act 614, Imd. Eff. Jan. 3, 2007

### 38.1029 Trustees; compensation and expenses.

Sec. 29.

Trustees shall serve without compensation but shall be reimbursed for any reasonable traveling expenses incurred in attending meetings of the board.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1030 Board of trustees; quorum, proxy.

Sec. 30.

Each trustee is entitled to 1 vote on any action of the board and at least 6 concurring votes are necessary for any action by the board at a meeting. A decision or action shall not become effective, unless presented and so approved by the action of the board. A trustee shall not vote by proxy, but shall be present at the meeting in order to have his or her vote recorded.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

### 38.1031 Board of trustees; powers and duties.

Sec. 31.

The board shall, in addition to all other powers and duties arising out of this act and not otherwise specifically reserved or delegated to others, have the powers and duties designated in sections 32 to 44, inclusive, of this act.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1032 Board of trustees; regular and special meetings; conducting business at public meeting; notice of meeting.

Sec. 32.

The board shall hold regular meetings at least quarterly each year and special meetings when considered necessary by the chairperson of the board. Meetings of the board shall be held in the office of the board. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1977, Act 179, Imd. Eff. Nov. 17, 1977

### 38.1033 Board of trustees; authority as to retirement allowances, suspensions and refunds.

Sec. 33.

The board shall consider and pass on all applications for retirement allowances and refunds, authorize the granting of all retirement allowances and refunds and suspend any payment or payments, all in accordance with the provisions of this act.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1034 Board of trustees; certification of prescribed interest rate; adoption of actuarial tables.

Sec. 34.

The board shall certify in the records of the board the prescribed interest rate, and adopt all necessary actuarial tables in accordance with certifications of the actuary.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1035 Board of trustees; estimate of appropriation.

Sec. 35.

The board shall submit to the governor on or before November first of each year an estimate of the amount of appropriation required for the purpose of the system for the next fiscal year.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1036 Repealed. 1987, Act 58, Imd. Eff. June 23, 1987.

**Compiler's Notes:** The repealed section pertained to investments by board of trustees.

### 38.1036a Reinstatement of suspended contributions.

Sec. 36a.

If the actuary determines in his or her annual valuation of the system that the system is less than 100% funded, the retirement board may reinstate the member contributions that were suspended in sections 21, 22, and 50a and reduce the member contributions that were increased in section 22c.

**History:** Add. 1998, Act 501, Imd. Eff. Jan. 5, 1999

### 38.1037 Repealed. 1981, Act 123, Imd. Eff. July 23, 1981.

**Compiler's Notes:** The repealed section pertained to annual medical examination of disability retirants.

**38.1038 Board of trustees; offices; books and records; availability of certain writings to public.**

Sec. 38.

The board shall establish an office or offices which provide suitable space for the meetings of the board and for the necessary administrative personnel. All books and records shall be kept in those offices. A writing prepared, owned, used, in the possession of, or retained by the board, in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1977, Act 179, Imd. Eff. Nov. 17, 1977

**38.1039 Board of trustees; appointment of secretary and administrative personnel.**

Sec. 39.

The board shall appoint a secretary and employ such other actuarial, medical, clerical or other help as shall from time to time be required for the efficient administration of the system and determine and fix the rate of pay of such persons.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

**38.1040 Board of trustees; record of proceedings; individual accounts; actuarial data.**

Sec. 40.

The board shall keep a permanent record of all proceedings of the board, a separate account for each individual member and such additional data as shall be specified by the actuary as being necessary for required calculations and valuations.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

**38.1041 Board of trustees; audit of accounts; annual statement.**

Sec. 41.

The board shall have the accounts of the system audited at least biennially by the auditor general and submit an annual statement to the governor and legislature as soon as possible after the end of each fiscal year.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960

**38.1042 Acceptance of gift, grant, or bequest by board.**

Sec. 42.

The board may accept any gift, grant, or bequest of any money or securities for the purposes designated by the

grantor.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1043 Individual statement.

Sec. 43.

The board shall submit an individual statement to a member, deferred vested member, or retirant upon reasonable request. The statement shall indicate the amount of accumulations to the credit of the member, deferred vested member, or retirant as of the latest date practicable.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1044 Rules and bylaws.

Sec. 44.

The board shall adopt rules and bylaws necessary for the efficient administration of the system.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974

### 38.1045 Secretary of board; powers and duties.

Sec. 45.

The secretary of the board shall be in charge of the administration of the detailed affairs of the retirement system and, in addition to the other powers and duties as are properly delegated by the board, shall:

(a) Collect and record the receipt of all payments to the retirement system, including member contributions, state contributions, interest and principal collections on investments as they become due and payable, and other funds accruing to the retirement system, and immediately deposit them with the state treasurer for the account of the retirement system.

(b) Sign vouchers requesting warrants upon the state treasurer pursuant to resolutions of the board, authorizing payment of benefits, refunds, and expenses out of funds belonging to the retirement system.

(c) Certify to the proper authority the names of the persons from whom deductions are to be made and the amounts or rates of the contributions to be deducted.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1046 Actuary; technical advisor of board, powers and duties.

Sec. 46.

The actuary shall be the technical advisor of the board and, in addition to supplying general information on technical matters, shall:

1. Make an investigation during the fourth year of operation of the system, and at least once every 5 years

thereafter of the mortality, retirement, disability, separation, interest and salary rates and recommend, as a result of each such investigation, the tables to be adopted for all required actuarial calculations;

2. Make an annual valuation of the liabilities and reserves of the system, an annual determination of the amount of the required state contributions and certify the results thereof to the board.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1047 State treasurer as ex officio treasurer of retirement system; duties.

Sec. 47.

The state treasurer shall be ex officio the treasurer of the retirement system and shall:

(a) Act as official custodian of the cash and securities belonging to the retirement system and provide adequate safe deposit facilities for the preservation of the securities and hold the cash and securities subject to the order of the board.

(b) Receive from the secretary all items of cash belonging to the retirement system, as the items of cash are transmitted by the secretary of the retirement system, including member contributions, state contributions, interest and principal on investments, and other income accruing to the retirement system, and deposit all amounts in a special trust fund for the account of the retirement system, and notify the board of all the transactions semiannually.

(c) Furnish a corporate surety bond acceptable to the board of that amount as the board designates. The bond shall indemnify the board against any loss which may result from any action or failure to act on the part of the treasurer or any of his or her agents. All reasonable charges incidental to the procuring and giving of the bond shall be paid by the board.

(d) Invest and reinvest, in the manner permitted by the board, the cash assets of the system in excess of the amount required for current operations.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987

### 38.1048 Warrants.

Sec. 48.

The accounting division of the department of management and budget is authorized and directed to draw warrants upon the state treasurer payable from the funds of this system for purposes provided for in this act upon the presentation of vouchers approved by the secretary of the board in accordance with resolutions of the board.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974

### 38.1049 Payroll voucher.

Sec. 49.

(1) All payroll vouchers covering payments of salary to members for their services shall indicate all of the following:

(a) The amount of member contributions which are to be deducted from the salary of each member included in the payroll vouchers.

(b) The net amount payable to each member after the deduction of the contribution.

(c) The total of all member contributions deducted.

(2) An additional certified copy of each payroll voucher, by the state, shall be prepared and forwarded along with the original payroll voucher for transmittal to the board as provided in this act.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1050 Investment and reinvestment of cash assets; nonapplicability to Tier 2.

Sec. 50.

The cash assets of the retirement system in excess of the amount required for current operations shall be invested and reinvested by the board in the manner provided by Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws. This section does not apply to Tier 2.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1050a Grants and insurance revolving fund; creation; purpose; expenditures; payments to fund by payroll deductions; purchase and payment of premiums on life insurance policies.

Sec. 50a.

(1) The grants and insurance revolving fund is created in the state treasury as a separate fund, into which shall be paid legislative grants, earnings from the fund, payments by or on behalf of members, and revenue from other sources accepted by the board. Money appropriated to the grants and insurance revolving fund shall not revert to the general fund at the close of the fiscal year but shall remain in the grants and insurance revolving fund. The legislative grants in the grants and insurance revolving fund shall not be expended except upon express direction of the legislature; but all other money in the grants and insurance revolving fund may be expended for the purposes and in the manner provided in this section.

(2) Except as otherwise provided in this subsection, beginning with salary received that is attributable to service performed on and after January 1, 1995, each legislator or member shall pay a sum equal to 0.5% of salary to the grants and insurance revolving fund to be eligible for the benefits provided in this section. The sum shall be collected by payroll deductions in the manner prescribed in this act. Beginning on the effective date of section 36a, member contributions required under this subsection are suspended unless reinstated by the board under section 36a.

(3) The board shall self-insure or shall purchase and pay the premiums on a life insurance policy or policies to provide life insurance death or other benefits for retirants, deferred vested members, and the spouses, eligible children, or eligible beneficiaries of retirants and deferred vested members from the amounts paid pursuant to subsection (2) for this purpose to the grants and insurance revolving fund. Life insurance benefits provided on June 23, 1987 shall not be diminished due to the amendments to this section by 1987 PA 58.

**History:** Add. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1981, Act 185, Imd. Eff. Dec. 23, 1981 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1998, Act 80, Imd. Eff. May 4, 1998 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

### 38.1050b Hospitalization, medical, dental, and vision coverage; purchase; payment of premiums; manner.

Sec. 50b.

(1) For a retirant or a survivor or beneficiary of a deceased retirant, or for a deferred vested member if that deferred vested member first became a member on or before January 1, 1995, the retirement system shall purchase

and pay the premium for hospitalization and medical insurance coverage and dental and vision coverage for the retirant, deferred vested member, and the spouses, eligible children, and survivors of those retirants and deferred vested members. Except as otherwise provided in this section, the retirement system shall provide hospitalization and medical insurance coverage and dental and vision insurance coverage under this section at a level that is equal to or greater than the level of insurance coverage under this section in effect on December 1, 1992. The retirement board may increase the amounts each person who is enrolled in insurance coverage under this section is required to pay for co-pays or deductibles under that insurance coverage.

(2) On and after March 31, 1997, the retirement system shall also pay health insurance premiums described in this section in the manner prescribed in section 79.

**History:** Add. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Imd. Eff. Jan. 1, 1971 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1987, Act 58, Imd. Eff. June 23, 1987 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1051 Investment of retirement system funds; ownership by system; registration; recording; nonapplicability to Tier 2.

Sec. 51.

The retirement board shall clearly mark all investments to indicate ownership by the system and, to the extent possible, shall register all investments in the name of the system. The retirement board shall record all investments pursuant to generally accepted accounting principles promulgated by the governmental accounting standards board, upon adoption of those principles by the retirement board. This section does not apply to Tier 2.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1960, Act 113, Eff. Aug. 17, 1960 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994 ;-- Am. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1052 Board of trustees and employees; interest in investments prohibited; violation of section, penalty.

Sec. 52.

Except as otherwise herein provided, no trustee and no employee of the board shall have any direct interest in the income gains or profits of any investments made by the board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the board shall become an indorser or surety, or in any manner an obligor for money loaned or borrowed from the system. Whoever violates any of the provisions of this section shall be guilty of a misdemeanor.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1053 Vested interest in refunds; payment of member contributions; discharge of claims.

Sec. 53.

(1) Each member shall, by virtue of the payment of the member contributions required to be paid to the retirement system, receive a vested interest in the refunds provided in section 55, and each member in consideration of the vested interest shall be considered to have agreed to, and authorized the deductions from the payments of salary of all contributions payable to the retirement system pursuant to this act. Payment of salary as prescribed by

law, less the amounts of contributions provided in this act shall, together with the special vested rights in the refunds provided by this retirement system, be a full complete discharge of all claims of payments for service rendered by a member during the period covered by the payment.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981

### 38.1054 Payments as obligations of state; disposition of revenues.

Sec. 54.

(1) It is the intention of the legislature that the payment of the required state contributions, all benefits granted under this system, and all expenses in connection with the administration and operation of the retirement system are made obligations of the state.

(2) All revenue derived from deposits and investments authorized by this act shall be credited to the account of this system in the state treasury and shall be used to pay benefits and costs of administration as provided in this act.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1994, Act 359, Eff. Dec. 31, 1994

### 38.1055 Refund of contributions with interest; request; forfeiture; service credit upon resumption of membership; designation of beneficiary; payment of contributions with interest.

Sec. 55.

(1) A member who does not meet the requirement of section 23(1)(a) upon leaving service, or a deferred vested member who is no longer a member, upon written request, shall receive, with interest at 4% compounded annually, a refund of all of his or her contributions standing to his or her credit in the members' savings fund. By accepting the refund a member who does not meet the requirement of section 23(1)(a) upon leaving service or a deferred vested member forfeits all accrued rights and benefits in the retirement system and loses credit for all service rendered to the state for which credit is given under this act. A member who does not meet the requirement of section 23(1)(a) upon leaving service or a deferred vested member who accepts a refund, and again becomes a member, may receive service credit for prior service by paying to the retirement system, within 180 days after he or she again becomes a member, the full amount of money he or she has received as a refund together with interest at 6% per annum compounded annually from the time of the refund until the time of repayment.

(2) A member, deferred vested member, or retirant who is not married and does not have an eligible child may designate in writing a beneficiary to receive the contributions that the member, deferred vested member, or retirant made to the survivors' retirement fund. Upon the death of a member, deferred vested member, or retirant who designated a beneficiary pursuant to this subsection, the survivors' retirement fund contributions made by the deceased member, deferred vested member, or retirant shall be paid to the named beneficiary. If a beneficiary was not named pursuant to this subsection, then the contributions shall be paid to the estate of the deceased member, deferred vested member, or retirant upon request by the authorized representative of the deceased's estate. Contributions paid pursuant to this subsection shall be paid with interest at 4% compounded annually beginning at the time the member, deferred vested member, or retirant last made a contribution.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1961, Act 167, Eff. Sept. 8, 1961 ;-- Am. 1963, Act 45, Eff. Sept. 6, 1963 ;-- Am. 1968, Act 229, Eff. July 1, 1968 ;-- Am. 1970, Act 237, Eff. Jan. 1, 1971 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974 ;-- Am. 1978, Act 560, Imd. Eff. Dec. 27, 1978 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1981, Act 185, Imd. Eff. Dec. 23, 1981

### 38.1056 Undivided interest in assets of system.

Sec. 56.

The assets of the system shall be invested as one fund, and no particular person, group of persons or entity shall have any right in any specific security or property, or in any item of cash other than an undivided interest in the whole as specified in the provisions of this act as it now exists or is subsequently amended.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1057 Retirement allowances, benefits, and credits not subject to taxation; subject to taxation beginning January 1, 2012; subject to public employee retirement benefit protection act.

Sec. 57.

(1) Except as otherwise provided in this section, all retirement allowances and other benefits payable under this act and all accumulated credits of members, deferred vested members, and retirants in this retirement system are not subject to taxation by this state or any political subdivisions of this state.

(2) Beginning January 1, 2012, all retirement allowances and other benefits payable under this act and all accumulated credits of members, deferred vested members, and retirants in this retirement system are subject to taxation by this state upon distribution to a member, deferred vested member, or retirant.

(3) All retirement allowances and other benefits payable under this act and all accumulated contributions of members, deferred vested members, and retirants in this retirement system are subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1961, Act 167, Eff. Sept. 8, 1961 ;-- Am. 1981, Act 123, Imd. Eff. July 23, 1981 ;-- Am. 1985, Act 39, Imd. Eff. June 13, 1985 ;-- Am. 1995, Act 258, Imd. Eff. Jan. 5, 1996 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 43, Imd. Eff. May 25, 2011

### 38.1058 Retirement system records; falsification, penalty.

Sec. 58.

Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record of this system, in any attempt to defraud the system, shall be guilty of a misdemeanor.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

### 38.1058a Correction of error; adjustment of payment.

Sec. 58a.

If a change or error in the records of the retirement system results in a retirant, retirement allowance beneficiary, or refund beneficiary receiving from the retirement system more or less than the retirant, retirement allowance beneficiary, or refund beneficiary would have been entitled to receive had the records been correct, the retirement system shall correct the error, and as far as practicable, shall adjust the payment to provide an actuarial equivalent of the benefit to which the retirant, retirement allowance beneficiary, or refund beneficiary was entitled. An adjustment in benefits shall not be made for an error totaling $10.00 or less annually and the amount shall be debited or credited to the members' retirement fund.

**History:** Add. 1998, Act 501, Imd. Eff. Jan. 5, 1999

**38.1059 Payment of benefits; commencement.**

Sec. 59.

No payments of benefits shall be made until on or after the first day of January, 1959.

**History:** 1957, Act 261, Eff. Sept. 27, 1957

**38.1059a Retirement system as qualified pension plan; administrative requirements and benefit limitations; qualified military service.**

Sec. 59a.

(1) This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, 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, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The board of trustees shall administer the retirement system to fulfill this intent.

(2) Notwithstanding any other provision of this act, 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 portions 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 of 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 survivors, 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, vested former members, retirants, and retirement allowance 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 vested members, retirants, and retirement allowance 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(d)(3), 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 board of trustees, 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) For purposes of determining actuarial equivalent retirement allowances under this act, the actuarially assumed interest rate shall be 7% with utilization of the 1971 group annuity and mortality table.

(9) 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(a)(17), 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.

(10) 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(u). This subsection applies to all qualified military service on or after December 12, 1994. Beginning 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 will be treated as having resumed and then terminated employment on account of death.

**History:** Add. 1995, Act 175, Imd. Eff. Oct. 17, 1995 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002 ;-- Am. 2006, Act 614, Imd. Eff. Jan. 3, 2007 ;-- Am. 2008, Act 355, Imd. Eff. Dec. 23, 2008

**38.1060 Short title.**

Sec. 60.

This act shall be known and may be cited as the "Michigan legislative retirement system act".

**History:** 1957, Act 261, Eff. Sept. 27, 1957 ;-- Am. 1974, Act 215, Eff. Dec. 31, 1974

**38.1061 Election to terminate membership in Tier 1 and become qualified participant in Tier 2; election by deferred vested member or former nonvested member; election as irrevocable; rights and duties; method of election; signature of spouse; waiver; election subject to eligible domestic relations order; notice of disqualification for tax purposes.**

Sec. 61.

(1) The retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on April 30, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight May 31, 1998.

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

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under this act effective 12 midnight May 31, 1998. This subdivision does not affect a person's right to health benefits provided under this act pursuant to section 79.

(2) If an individual who was a deferred vested member on March 30, 1997, or an individual who was a former nonvested member on March 30, 1997 becomes a legislator or lieutenant governor and is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a deferred vested member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a deferred vested member or a former nonvested member during the period beginning on the date of the individual's eligibility for membership and ending upon the expiration of 60 days after the date of that eligibility. A deferred vested member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A deferred vested member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A deferred vested member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

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

date of the election.

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

(c) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the last day of the payroll period that includes the date of the election. This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 79.

(3) After consultation with the retirement system's actuary, the retirement board shall determine the method by which a member, deferred vested member, or former nonvested member shall make a written election under this section. If the member, deferred vested member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(4) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(5) If the board receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1062 Election to terminate membership in retirement system under MCL 38.1061(1) and (2); transfer of lump sum amount; recomputation; calculation; basis; utilization of actuarial valuation report; notification of disqualification for tax purposes.**

Sec. 62.

(1) For a member who elects to terminate membership in Tier 1 under section 61(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before September 30, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions and applicable interest, if any, from the member's savings fund as of 12 midnight May 31, 1998.

(b) For a member who is vested under section 23(1)(a) as of 12 midnight on May 31, 1998, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the member's retirement fund. Except as provided in subsection (5), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final salary as of 12 midnight on May 31, 1998. The actuarial present value shall be computed as of 12 midnight May 31, 1998 and shall be based on the following:

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

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

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight May 31, 1998. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight May 31, 1998:

(A) Age 55.

(B) The member's age, if the member is at least 50 years old and the sum of his or her age and estimated credited service equals or exceeds 70.

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

(2) For each member who elects to terminate membership in the retirement system under section 61(1), the retirement system shall recompute the amount transferred under subsection (1) not later than November 30, 1998 based upon the member's actual credited service and actual final salary as of 12 midnight May 31, 1998. If the recomputed amount differs from the amount transferred under subsection (1) by $10.00 or more, not later than December 15, 1998, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the members' retirement fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest

from 12 midnight May 31, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the members' retirement fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a deferred vested member who elects to terminate membership in this retirement system under section 61(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The deferred vested member's accumulated contributions and applicable interest, if any, from the members' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) The excess, if any, of the actuarial present value of the deferred vested member's accumulated benefit obligation, over the amount specified in subdivision (a), from the members' retirement fund. Except as provided in subsection (5), for the purposes of this subsection, the present value of the deferred vested member's accumulated benefit obligation is based upon the deferred vested member's estimated credited service and estimated final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

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

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

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

(A) Age 55.

(B) The deferred member's age, if the deferred member is at least 50 years old and the sum of his or her age and estimated credited service equals or exceeds 70.

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

(4) For each deferred vested member who elects to terminate membership in Tier 1 under section 61(2), the retirement system shall recompute the amount transferred under subsection (3) not later than the expiration of 90 days after the transfer occurs under subsection (3) based upon the deferred vested member's actual credited service and actual final salary as of 12 midnight on the last day of the payroll period that includes the date of the election. If the recomputed amount differs from the amount transferred under subsection (3) by $10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the members' retirement fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the members' retirement fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

(5) For the purposes of subsections (1) to (4), the calculation of estimated and actual present value of the member's or deferred vested member's accumulated benefit obligation shall be based upon methods adopted by the retirement system's actuary in consultation with the retirement board. The retirement system shall utilize the same actuarial valuation report used to calculate the amount transferred under subsection (1) or (3) when making the recomputation required under subsection (2) or (4). Estimated and actual final salary shall be determined as provided in section 9 as of 12 midnight on the date the member or deferred member ceases to be a member of Tier 1 under section 61.

(6) For a former nonvested member who elects to terminate membership in Tier 1 under section 61(2) and who has accumulated contributions standing to his or her credit in the members' savings fund, the retirement system shall direct the state treasurer to transfer a lump sum amount from the members' savings fund to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The former nonvested member's accumulated contributions and applicable interest, if any, from the members' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

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

(7) If the board receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 305, Imd. Eff. July 28, 1998 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1063 Calculation of accrued cost savings; submission of total amount in executive budget to legislature; appropriation.

Sec. 63.

After consulting the retirement system's actuary, the board shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of 1996 PA 486 over the costs that would have been incurred by this state to fund this retirement system had 1996 PA 486 not been implemented. The total amount of the cost savings shall be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year to the health insurance fund created by section 22c.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 99, Imd. Eff. July 19, 2011

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1064 Meanings of words and phrases; "accumulated balance" defined.

Sec. 64.

(1) For the purposes of this section and sections 65 to 80, the words and phrases defined in this section and sections 65 to 80 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1065 "Employer,""former qualified participant," and "health benefit dependent" defined.

Sec. 65.

(1) "Employer" means this state.

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

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

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1066 "Qualified participant,""refund beneficiary," and "state treasurer" defined.

Sec. 66.

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

(a) An individual who first becomes a legislator or lieutenant governor on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 61.

(2) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 77 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 78.

(3) "State treasurer" means the treasurer of this state.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1067 Administration and investment of Tier 2 by state treasurer; state treasurer as fiduciary and trustee; appointment of advisory board; determination of provisions and procedures; authority and responsibility of state treasurer to employ or contract with employees or for services.

Sec. 67.

(1) The state treasurer shall administer Tier 2 and shall invest the assets of Tier 2. The state treasurer is the fiduciary and trustee of Tier 2. The state treasurer may appoint an advisory board to assist the state treasurer in carrying out his or her duties as fiduciary and trustee.

(2) The state treasurer shall determine the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(3) The state treasurer has the exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper administration of and investment of assets of Tier 2, including but not limited to managerial, professional, legal, clerical, technical, and administrative personnel or services.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1068 Hearing.

Sec. 68.

(1) A qualified participant, former qualified participant, health benefit dependent, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the state treasurer shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969,

Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An individual may be represented by counsel or other duly authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of Act No. 306 of the Public Acts of 1969, being sections 24.221 to 24.264 and 24.291 to 24.292 of the Michigan Compiled Laws, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1069 Accumulated employer and employee contributions and earnings; direction of investment; limitations inapplicable to Tier 2.

Sec. 69.

Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the state treasurer. The limitations on the percentage of total assets for investments provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, do not apply to Tier 2.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1070 Tier 2; payment of administrative expenses.

Sec. 70.

The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the state treasurer.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1071 Participation in other public sector retirement benefits plan.

Sec. 71.

A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the state treasurer, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

## 38.1072 Individual becoming legislator or lieutenant governor on or after March 31, 1997; notice of election.

Sec. 72.

An individual who first becomes a legislator or lieutenant governor on or after March 31, 1997 may irrevocably elect not to become a qualified participant of Tier 2 or may irrevocably elect to discontinue participation in Tier 2 by filing written notice of the election with the state treasurer. Upon receipt of the election, his or her employer shall not contribute any percentage of salary under section 74 for the individual who makes either election.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

## 38.1073 Election to terminate membership in Tier 1; crediting Tier 2 account; charging Tier 2 account for excess transfers.

Sec. 73.

(1) The state treasurer shall promptly credit the Tier 2 account of a qualified participant who makes an election under section 61 to terminate membership in Tier 1 with any amount transferred from Tier 1 pursuant to section 62.

(2) Not later than 30 days after receipt of a recomputed amount under section 62(2) or (4), the state treasurer shall charge the qualified participant's Tier 2 account for any amount of excess transfers under section 62(1) or (3) and transfer that amount to the appropriate fund in Tier 1. The state treasurer may determine which investment choice or choices within a qualified participant's Tier 2 account will be used for this purpose.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

## 38.1074 Section subject to vesting requirements; Tier 2 contributions by employer and qualified participant; limitations.

Sec. 74.

(1) This section is subject to the vesting requirements of section 75.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's salary.

(3) A qualified participant may periodically elect to contribute up to 3% of his or her salary to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to his or her Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1075 Tier 2; vesting requirements and schedule; health care coverage; vesting requirements.

Sec. 75.

(1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in the health insurance coverage provided in section 79 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 6 years of service as a qualified participant before January 1, 2013 and was not a member, deferred vested member, or former nonvested member of Tier 1.

(b) The qualified participant was a member, deferred vested member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 61, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 50b.

(c) The qualified participant meets all of the following requirements:

(i) Was not a member, deferred vested member, or former nonvested member of Tier 1.

(ii) Was first elected to fill a vacancy in the house of representatives for a period less than the full term but more than 1/2 of the term of office.

(iii) Has completed 5 years of service as a qualified participant before January 1, 2013.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2011, Act 200, Imd. Eff. Oct. 18, 2011

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1076 Crediting years of accrued service.

Sec. 76.

A qualified participant who was a member, deferred vested member, or former nonvested member of Tier 1 who makes an election to participate in Tier 2 pursuant to section 61, shall be credited with the years of service accrued under Tier 1 on the effective date of participation in Tier 2 for the purpose of meeting the vesting requirements for benefits under section 75.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1077 Refund beneficiary; nomination.

Sec. 77.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the state treasurer. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the state treasurer may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1078 Distribution of accumulated balance.**

Sec. 78.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the state treasurer, the state treasurer, in a lump sum distribution, shall distribute the accumulated balance to the legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the state treasurer.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997

**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**38.1079 Health insurance coverage; election; eligibility.**

Sec. 79.

(1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is vested in health benefits under section 75(2).

(b) The former qualified participant meets 1 of the following requirements:

(i) He or she meets or exceeds the benefit commencement age employed in the actuarial present value calculation under section 62 and the service requirements that would have applied to that former participant under Tier 1 for receiving health insurance coverage under section 50b, if that former participant was a member of Tier 1.

(ii) He or she is 55 years of age or older.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 50b. A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage to begin at the death of the deceased former qualified participant in the manner prescribed in this section.

(3) An individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 50b.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 75(2)(a) or (c), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be 90% of the payments for health insurance coverage under section 50b. If the individual elects the health insurance coverage provided under section 50b, this state shall transfer its portion of the amount calculated under this subsection to the health insurance fund created by section 22c.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 75(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 50b. If the individual elects the health insurance coverage provided under section 50b, the state shall transfer its portion of the amount calculated under this subsection to the health insurance fund created by section 22c.

(6) If the department of technology, management, and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

(7) A former qualified participant who does not meet the vesting requirements of section 75(2) is not eligible for health insurance benefits under this act.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 501, Imd. Eff. Jan. 5, 1999 ;-- Am. 2006, Act 614, Imd. Eff. Jan. 3, 2007 ;-- Am. 2011, Act 200, Imd. Eff. Oct. 18, 2011
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

### 38.1080 Distributions; exemption from tax; subject to public employee retirement benefit protection act; right of setoff to recover overpayment and satisfy claims; correction of errors in records and actions.

Sec. 80.

(1) Distributions from employer contributions made pursuant to section 74(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 74(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax and are subject to the public employee retirement benefit protection act.

(2) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

**History:** Add. 1996, Act 486, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 97, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Section 2 of Act 486 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

## RECIPROCAL RETIREMENT ACT

## Act 88 of 1961

AN ACT to provide for the preservation and continuity of retirement system service credits for public employees who transfer their employment between units of government.

**History:** 1961, Act 88, Eff. Sept. 8, 1961

*The People of the State of Michigan enact:*

## 38.1101 Reciprocal retirement act; short title.

Sec. 1.

This act shall be known and may be cited as the "reciprocal retirement act".

**History:** 1961, Act 88, Eff. Sept. 8, 1961

## 38.1102 Reciprocal retirement act; definitions.

Sec. 2.

As used in this act:

(a) "State unit" means the state employees' retirement system, established by Act No. 240 of the Public Acts of 1943, as amended, being sections 38.1 to 38.43 of the Compiled Laws of 1948; the public school employees' retirement system, established by chapter 1 of Act No. 136 of the Public Acts of 1945, as amended, being sections 38.201 to 38.234 of the Compiled Laws of 1948; the judges' retirement system, established by Act No. 198 of the Public Acts of 1951, as amended, being sections 38.801 to 38.830 of the Compiled Laws of 1948; the probate judges' retirement system, established by Act No. 165 of the Public Acts of 1954, as amended, being sections 38.901 to 38.933 of the Compiled Laws of 1948; the department of public safety pension, accident and disability fund, established by Act No. 251 of the Public Acts of 1935, as amended, being sections 28.101 to 28.110 of the Compiled Laws of 1948; and the legislative retirement system, established by Act No. 261 of the Public Acts of 1957, as amended, being sections 38.1001 to 38.1060 of the Compiled Laws of 1948.

(b) "Municipal unit" means a county, city, village, township or school district of the first class; any separate corporation or instrumentality established by 1 or more counties, cities or villages, as permitted by law; any corporation or instrumentality supported in most part by counties, cities and villages, or any of them; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with 1 or more counties, cities and villages.

(c) "Governmental unit" means the state to the extent the employees of the state are covered under an applicable state unit; and any municipal unit.

(d) "Reciprocal unit" means any state unit or municipal unit which elects to come under the provisions of this act.

(e) "Retirement system" means the retirement, pension or annuity system, plan or fund under which a governmental unit covers its employees. The term "retirement system" shall not include the federal social security old-age survivors' and disability insurance program.

(f) "Reciprocal retirement system", in the case of a municipal unit electing to become a reciprocal unit, means the retirement systems under which the municipal unit covers its employees. In the case of a state unit, "reciprocal retirement system" means a state unit which elects to become a reciprocal unit.

(g) "Accumulated deposits" or "accumulated contributions" means the amounts deducted from the compensations of a member of a reciprocal retirement system and credited to his individual account in the system, together with interest, if any, credited thereon.

(h) "Final average salary" means the salary or the average of salaries used in computing a retirement allowance, as set forth in the retirement system plan.

(i) "Retirement allowance" means the annuity, pension or retirement allowance payable to a member of a reciprocal retirement system on account of his employment with a reciprocal unit.

(j) "Retirement" means the withdrawal of a member of a reciprocal retirement system from the employ of a reciprocal unit with a retirement allowance payable from funds of the reciprocal retirement system.

**History:** 1961, Act 88, Eff. Sept. 8, 1961 ;-- Am. 1965, Act 106, Imd. Eff. June 30, 1965

## 38.1102a Compliance with applicable requirements of protecting local government retirement and benefits act.

Sec. 2a.

A reciprocal unit and a reciprocal retirement system shall comply with any applicable requirements under the protecting local government retirement and benefits act.

**History:** Add. 2017, Act 209, Imd. Eff. Dec. 20, 2017

### 38.1103 Reciprocal retirement act; adoption by municipal or state unit; certification, force and effect.

Sec. 3.

(1) Any municipal unit, which covers its employees under a retirement system or systems, by a majority vote of its governing body may elect to adopt the provisions of this act for its employees covered under such retirement system or systems.

(2) Any state unit, by a majority vote of its governing body, may elect to have the provisions of this act made applicable to its members.

(3) The governing body of a municipal or state unit, within 10 days after it elects to come under the provisions of this act, shall file written certification of its action with the secretary of state. Upon the filing of the certification the municipal unit or state unit shall be a reciprocal unit. The secretary of state shall maintain a list of reciprocal units, which list shall be available to any municipal unit or state unit requesting a copy.

(4) The provisions of this act, when adopted by a municipal or state unit shall be effective for the unit in addition to the provisions of charter, ordinance, resolution or state law governing the retirement systems for the reciprocal unit, as the provisions of charter, ordinance, resolution or state act are in force and as amended.

**History:** 1961, Act 88, Eff. Sept. 8, 1961 ;-- Am. 1965, Act 106, Imd. Eff. June 30, 1965

### 38.1104 Reciprocal retirement system; eligibility for retirement allowance; conditions; commencement of retirement allowance.

Sec. 4.

A member of a reciprocal retirement system who leaves the employ of a reciprocal unit, designated as the preceding reciprocal unit, and enters the employ of another governmental unit, designated as the succeeding governmental unit, shall be entitled to a retirement allowance payable by the preceding reciprocal unit's retirement system subject to the following conditions:

(a) The member has 30 months or more of credited service in force acquired in the employ of the preceding reciprocal unit.

(b) Beginning September 1, 2006, the member does not withdraw his or her accumulated deposits from the preceding reciprocal unit's retirement system, or if the member has withdrawn the accumulated deposits, the member deposits with the preceding reciprocal unit the amount withdrawn together with interest compounded annually at the rate in effect for the preceding reciprocal unit; the deposit to be made within 20 years after the date the member becomes employed by the succeeding governmental unit.

(c) Beginning September 1, 2006, the member enters the employ of each succeeding governmental unit within 20 years after the date of leaving the employ of each preceding governmental unit.

(d) The member's credited service in force with the preceding reciprocal retirement systems plus the member's credited service acquired in the employ of succeeding governmental units equals or exceeds the minimum credited service required for age and service retirement in the applicable preceding reciprocal retirement system.

(e) The retirement allowance payable by any preceding reciprocal retirement system shall be determined at the time the member ceased to be a member of the preceding reciprocal retirement system, upon the basis of the retirement allowance formula of the preceding reciprocal retirement system, the member's credited service in force in the preceding reciprocal retirement system, and the member's final average salary at that time.

(f) Payment of a retirement allowance by a preceding reciprocal retirement system shall begin on the first day of the second calendar month immediately following the month in which proper written application is filed with the governing body of the preceding reciprocal retirement system on or after attainment of 60 years of age. The retirement allowance shall not begin before attainment of the minimum age for age and service retirement required in the preceding reciprocal retirement system.

**History:** 1961, Act 88, Eff. Sept. 8, 1961 ;-- Am. 1963, Act 186, Eff. Sept. 6, 1963 ;-- Am. 1965, Act 106, Imd. Eff. June 30, 1965 ;-- Am. 1971, Act 48, Imd. Eff. June 28, 1971 ;-- Am. 1975, Act 103, Eff. Jan. 1, 1976 ;-- Am. 1979, Act 115, Imd. Eff. Oct. 9, 1979 ;-- Am. 1982, Act 520, Imd. Eff. Dec. 31, 1982 ;-- Am. 1988, Act 15, Imd. Eff. Feb. 18, 1988 ;-- Am. 1990, Act 274, Imd. Eff. Dec. 3, 1990 ;-- Am. 2008, Act 502, Imd. Eff. Jan. 13, 2009

**38.1105 Credited service generally.**

Sec. 5.

A member of a reciprocal retirement system who has 30 months or more of credited service acquired as a member of the system and who has attained the age but has not met the service requirements for age and service retirement shall be entitled to use his or her credited service in force previously acquired as a member of governmental unit retirement systems in meeting the service requirements of the system from which he or she retires. Beginning September 1, 2006, if the member has a break in governmental unit employment for a period longer than 20 years, his or her service rendered in the employ of the governmental units prior to his or her last break in service shall not be used in satisfying the service requirement for age and service retirement in the system from which he or she retires. Except as provided in section 6, credited service acquired in a governmental unit in which the member was previously employed shall not be used in determining the amount of his or her retirement allowance payable by the reciprocal retirement system from which he or she retires unless otherwise provided by the retirement system.

**History:** 1961, Act 88, Eff. Sept. 8, 1961 ;-- Am. 1965, Act 106, Imd. Eff. June 30, 1965 ;-- Am. 1990, Act 274, Imd. Eff. Dec. 3, 1990 ;-- Am. 2008, Act 502, Imd. Eff. Jan. 13, 2009

**38.1106 Transfer of credited service; agreement between preceding reciprocal unit and succeeding reciprocal unit; resolution; financial consideration; actuarial present value of retirement allowance; written policy.**

Sec. 6.

(1) A reciprocal unit, designated as the preceding reciprocal unit, may enter into an agreement with a reciprocal unit, designated as the succeeding reciprocal unit, to transfer credited service of a member who leaves the employ of the preceding reciprocal unit and enters the employ of the succeeding reciprocal unit. The agreement shall be by resolution of the governing body of each reciprocal unit. The resolution shall specify the amount of credited service being transferred from the preceding reciprocal unit to the member's credit in the succeeding reciprocal unit and the amount of financial consideration being transferred from the preceding reciprocal unit to the succeeding reciprocal unit. The financial consideration transferred under this section shall not be greater than the larger of the following:

(a) The accumulated contributions of the member whose credited service is being transferred.

(b) The actuarial present value of the retirement allowance payable by the preceding reciprocal unit under section 4 if the preceding reciprocal unit does not transfer the member's credited service under this section.

(2) A succeeding reciprocal unit, before passing a resolution described in subsection (1), shall determine the actuarial present value of the retirement allowance that will be payable to the member under the retirement plan of the succeeding reciprocal unit attributable to the credited service to be transferred under subsection (1).

(3) The actuarial present value of the retirement allowance payable by the preceding reciprocal unit under subsection (1) and by the succeeding reciprocal unit under subsection (2) shall be calculated using the interest rate and mortality tables specified by the Pension Benefit Guarantee Corporation for calculating the actuarial present value of immediate and deferred pensions under a terminated pension plan as provided in part 2619 of subchapter C of chapter XXVI of title 29 of the Code of Federal Regulations, 29 C.F.R. part 2619.

(4) Each reciprocal unit, by resolution of the governing body of the reciprocal unit, shall establish a written policy to implement the provisions of this section in order to provide uniform application of this section to all members of the reciprocal retirement system.

**History:** Add. 1990, Act 274, Imd. Eff. Dec. 3, 1990

## PUBLIC EMPLOYEE RETIREMENT SYSTEM INVESTMENT ACT

### Act 314 of 1965

AN ACT to authorize the investment of assets of public employee retirement systems or plans and the contributions made by employees to retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to limit employer and plan official liability for certain investment decisions; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers.

**History:** 1965, Act 314, Imd. Eff. July 22, 1965 ;-- Am. 1980, Act 31, Imd. Eff. Mar. 8, 1980 ;-- Am. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1988, Act 252, Eff. Jan. 1, 1989 ;-- Am. 1988, Act 253, Eff. Jan. 1, 1989 ;-- Am. 1988, Act 343, Imd. Eff. Oct. 19, 1988 ;-- Am. 2014, Act 242, Imd. Eff. June 27, 2014

*The People of the State of Michigan enact:*

### 38.1121-38.1131 Repealed. 1982, Act 55, Imd. Eff. Apr. 6, 1982.

**Compiler's Notes:** Prior to the repeal of MCL 38.1121 to 38.1131, MCL 38.1125a had expired by its own terms.

### 38.1132 Short title; meanings of words and phrases.

Sec. 12.

(1) This act shall be known and may be cited as the "public employee retirement system investment act".

(2) For the purposes of this act, the words and phrases defined in sections 12a to 12f have the meanings ascribed to them in those sections.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1988, Act 127, Imd. Eff. May 24, 1988 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

### 38.1132a Definitions; A.

Sec. 12a.

"Assets", for the purpose of meeting asset limitations contained in this act, means the total of the cash and investments of a system valued at market.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

### 38.1132b Definitions; D to G.

Sec. 12b.

(1) "Defined contribution plan" means a defined contribution plan as defined in section 414(i) in the internal revenue code, 26 USC 414.

(2) "Derivative" means either of the following:

(a) A contract or convertible security that changes in value in concert with a related or underlying security, future, or other instrument or index; or obtains much of its value from price movements in a related or underlying security, future, or other instrument or index; or both.

(b) A contract or security, such as an option, forward, swap, warrant, or a debt instrument with 1 or more options, forwards, swaps, or warrants embedded in it or attached to it, the value of which contract or security is determined in whole or in part by the price of 1 or more underlying instruments or markets.

(3) "Equity interests" means limited partnership interests and other interests in which the liability of the investor is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability of the investor.

(4) "Global security" means any of the following:

(a) A fixed income security issued by a government, a governmental agency, or a public or private company that is traded outside of the United States and may be issued in a currency other than the United States dollar.

(b) An equity position in a company traded on an exchange outside of the United States or a security that may be issued in a currency other than the United States dollar or an unregistered American depository receipt.

(c) An equity or fixed income derivative that derives its value from an investment described in subdivision (a) or (b) or a global security or bond index traded on an exchange outside of the United States.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

### 38.1132c Definitions; I to L.

Sec. 12c.

(1) "Investment fiduciary" means a person other than a participant directing the investment of the assets of his or her individual account in a defined contribution plan who does any of the following:

(a) Exercises any discretionary authority or control in the investment of a system's assets. Investment fiduciary under this subdivision includes the state treasurer and his or her investment personnel for the systems described in section 13(4).

(b) Renders investment advice for a system for a fee or other direct or indirect compensation.

(2) "Invest" or "investment" means the utilization of money in the expectation of future returns in the form of income or capital gain. Investments initially purchased in accordance with this act that subsequently do not qualify for purchase for any reason shall be considered to continue to meet the requirements of this act. Investment includes a guarantee by an investment fiduciary but does not include, as a sole investment, a pledge of the system's assets as collateral to guarantee the repayment of obligations made by a third party to a borrower.

(3) "Investment grade" means graded in the top 4 major grades as determined by 2 national rating services.

(4) "Large sponsored system" means a system created and established by a city that is subject to a plan for adjustment and that meets 1 or more of the following conditions:

(a) The city has a population of more than 600,000.

(b) The system has discharged at least $1,000,000,000.00 of pension liabilities in bankruptcy.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1132d Definitions; N to P.

Sec. 12d.

(1) "National rating services" means Moody's investors service, inc.; Standard & Poor's ratings group; Fitch investors service inc.; Duff & Phelps credit rating corp.; or any other nationally recognized statistical rating organization as determined by the state treasurer.

(2) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary expenses appearing in the regular financial statements of the system.

(3) "Obligations" means bonds, notes, collateral trust certificates, convertible bonds, debentures, equipment trust certificates, conditional sales agreements, guaranteed mortgage certificates, pass-through certificates, participation certificates, mortgages, trust deeds, general obligation bonds, revenue bonds, or other similar interest bearing instruments of debt. Obligations may be secured or unsecured and may be publicly offered or privately placed.

(4) "Party in interest" means, as it relates to a system, any of the following:

(a) An investment fiduciary, counsel, or employee of the system.

(b) A person providing services to the system.

(c) The political subdivision sponsoring the system.

(d) An organization, any of whose members are covered by the system.

(e) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subdivision (a) or (b).

(f) An entity controlled by an individual or organization described in subdivisions (a) to (e).

(5) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

(6) "Portfolio company" means an entity in which the investment fiduciary has invested or has considered investing system assets.

(7) "Private equity" means an asset class consisting of equity or debt securities in entities that are not publicly traded, that may include, but are not limited to, investments in leveraged buyouts, venture capital, growth capital, distressed or special situations, mezzanine capital, and secondary investments in equity or debt interests.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2014, Act 545, Imd. Eff. Jan. 15, 2015

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

## 38.1132e Definitions; S.

Sec. 12e.

(1) "Small business" means a corporation, partnership, sole proprietorship, or other entity which does not meet the specific requirements of investments permitted under this act.

(2) "Small business investment company" means an incorporated body or a limited partnership under section 301 of title III of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. 681.

(3) "Soft dollar" means brokerage commissions that are used by the system to purchase goods or services.

(4) "Stock" means capital stock, common stock, preferred stock, American depository receipts, or any other evidence of residual ownership of a corporation.

(5) "System" means a public employee retirement system created and established by this state or any political subdivision of this state.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

## 38.1132f Definitions; V.

Sec. 12f.

"Venture capital firm" means a corporation, partnership, proprietorship, or other entity, the principal business of which is or will be the making of investments in small business, either directly or indirectly by investing in entities the principal business of which is or will be the making of investments in small businesses.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

**38.1133 Investment authority; investment fiduciary; investing, reinvesting, holding in nominee form, and managing assets of system; powers and duties; compliance with divestment from terror act; costs; "consumer price index" defined; disclosure of fees or other compensation by investment service provider; "investment service provider" defined; prohibited acts; exceptions; requirements; debt instrument issued by foreign country; out-of-state travel; investment in hazardous waste deep disposal well facility; testimony by representative of office of retirement services in department of technology, management, and budget; executive summary of summary annual report; posting on website; submission to legislature; "state unit" defined.**

Sec. 13.

(1) This act supersedes any investment authority previously granted to a system under any other law of this state.

(2) The assets of a system may be invested, reinvested, held in nominee form, and managed by an investment fiduciary subject to the terms, conditions, and limitations provided in this act. An investment fiduciary of a defined contribution plan may arrange for 1 or more investment options to be directed by the participants of the defined contribution plan. The limitations on the percentage of total assets for investments provided in this act do not apply to a defined contribution plan in which a participant directs the investment of the assets in his or her individual account, and that participant is not considered an investment fiduciary under this act.

(3) An investment fiduciary shall discharge his or her duties solely in the interest of the participants and the beneficiaries, and shall do all of the following:

(a) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.

(b) Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.

(c) Make investments for the exclusive purposes of providing benefits to participants and participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the system.

(d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the system's investments for which the investment fiduciary has responsibility; and act accordingly. For purposes of this subsection, "appropriate consideration" includes, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:

(i) The diversification of the investments of the system.

(ii) The liquidity and current return of the investments of the system relative to the anticipated cash flow requirements of the system.

(iii) The projected return of the investments of the system relative to the funding objectives of the system.

(e) Give appropriate consideration to investments that would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments permitted under this act and available to the investment fiduciary at the time the investment decision is made.

(f) Prepare and maintain written objectives, policies, and strategies with clearly defined accountability and responsibility for implementing and executing the system's investments.

(g) Monitor the investment of the system's assets with regard to the limitations on those investments under this act. Upon discovery that an investment causes the system to exceed a limitation prescribed in this act, the investment fiduciary shall reallocate assets in a prudent manner to comply with the prescribed limitation.

(h) Prepare and maintain written policies regarding ethics and professional training and education, including travel, which policies contain clearly defined accountability and reporting requirements for the system's investment fiduciaries.

(i) Publish a summary annual report that includes all of the following:

(i) The name of the system.

(ii) The names of the system's investment fiduciaries.

(iii) The names of the system's service providers.

(iv) The system's assets and liabilities and changes in net plan assets on a plan-year basis.

(v) The system's funded ratio based on the ratio of valuation assets to actuarial accrued liabilities on a plan-year basis.

(vi) Except as otherwise provided in this subparagraph, the system's investment performance net of fees on a rolling calendar-year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods. For a system for which the state treasurer is the investment fiduciary, the summary annual report must include the system's investment performance net of fees on a rolling calendar-year and fiscal-year basis for the previous 1-, 3-, 5-, 7-, and 10-year periods.

(vii) The system's administrative and investment expenditures pursuant to standards of the Governmental Accounting Standards Board, including, but not limited to, a list of all expenditures made with soft dollars and all expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system, if any.

(viii) The system's itemized budget containing all projected expenditures, including, but not limited to, expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system.

(ix) The following information as provided in the system's most recent annual actuarial valuation report:

(A) The number of active members.

(B) The number of retirees and beneficiaries.

(C) The average annual retirement allowance.

(D) The total annual retirement allowances being paid.

(E) The valuation payroll.

(F) The employer's computed normal cost of benefits expressed as a percentage of valuation payroll.

(G) The employer's total contribution rate expressed as a percentage of valuation payroll.

(H) The weighted average of member contributions, if any.

(I) The actuarial assumed rate of investment return.

(J) The actuarial assumed rate of long-term wage inflation.

(K) The smoothing method utilized to determine the funding value of assets.

(L) The amortization method and period utilized for funding the system's unfunded actuarial accrued liabilities, if any.

(M) The system's actuarial cost method.

(N) Whether system membership is open or closed to specific groups of employees.

(O) The actuarial assumed rate of health care inflation.

(x) In addition to the expenditures reported under subparagraph (vii), for a large sponsored system a travel report listing all travel outside this state in the immediately preceding fiscal year that was funded in whole or in part with public funds. The report must include the total expenses for all out-of-state travel funded during the immediately preceding fiscal year and all of the following information for each travel occurrence:

(A) The name of each person receiving reimbursement for travel outside this state or whose travel costs were paid by the large sponsored system and funded in whole or in part with public funds.

(B) The destination.

(C) The dates.

(D) A brief statement of the reason for the travel.

(E) An itemization of the transportation and related costs, including, but not limited to, the amount for food, lodging, and vehicle rental and listing the names of hotels, restaurants, vehicle rental agencies, and vehicle models.

(xi) For a state unit, an executive summary of both of the following:

(A) The state unit's unfunded actuarial accrued liabilities for retiree health and pension.

(B) The information described in subparagraph (v).

(j) An investment fiduciary of a large sponsored system shall submit a summary annual report described in subdivision (i) to the financial review commission created under the Michigan financial review commission act, 2014 PA 181, MCL 141.1631 to 141.1643.

(k) For a state unit, submit the executive summary required under subdivision (i)(xi) to the senate and house of representatives appropriations committees and the senate and house fiscal agencies not less than 30 days after publication.

(l) For a system other than a state unit, submit the summary annual report published under subdivision (i) to the department of treasury not less than 30 days after publication.

(4) An investment fiduciary who is an investment fiduciary of any of the following shall comply with the divestment from terror act, 2008 PA 234, MCL 129.291 to 129.301, in making investments under this act:

(a) The Tier 1 retirement plan available under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(b) The Tier 1 retirement plan available under the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(c) The Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(d) The Michigan public school employees' retirement system created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(5) Subject to section 13g, an investment fiduciary may use a portion of the system's income to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other goods and services necessary for the conduct of the affairs of the system, including investment advisors, consultants, custodians, accountants, auditors, attorneys, actuaries, investment personnel, administrators, and physicians; and may enter into contracts for and pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state-administered system resulting from the payment of those costs must be made.

(6) Subject to this subsection and subsection (13), an investment fiduciary may use a portion of the system's income to defray the costs of professional training and education, including travel costs, of system board members, which professional training and education, including travel, are directly related to the administration, management, and operation of the system. The governing board vested with the general administration, management, and operation of the system or other decision-making body that is responsible for implementation and supervision of the system shall adopt an annual budget for professional training and education, including travel, authorized under this subsection. The budget adopted under this subsection must reflect the number of board members, the size of the system, and the educational objectives of the system. The system's total aggregate cost for professional training and education, including travel costs, authorized under this subsection for a fiscal year must not exceed $150,000.00 or an amount that is equal to the total number of system board members multiplied by $12,000.00, whichever is less. The system's total cost for professional training and education, including travel costs, authorized under this subsection for an individual system board member in a fiscal year must not exceed $30,000.00. Beginning January 1, 2013, the department of treasury shall adjust the dollar amounts in this subsection by an amount determined by the state treasurer at the end of the immediately preceding calendar year to reflect the cumulative annual percentage change in the Consumer Price Index. As used in this subsection, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

(7) Before any investment services are provided, an investment service provider shall provide the investment fiduciary of the system with a complete written disclosure of all fees or other compensation associated with its relationship with the system. After investment services are provided to the investment fiduciary of the system, an investment service provider shall provide on an annual basis written disclosure of all fees including, but not limited to, commissions, 12b-1 and related fees, compensation paid or to be paid to third parties, and any other compensation paid by the system to the investment fiduciary of the system. As used in this subsection, "investment service provider" means any individual, third-party agent or consultant, or other entity that receives direct or indirect compensation for consulting, investment management, brokerage, or custody services related to the system's assets. For purposes of this section only, investment service provider does not include a retirement system.

(8) The system must be a separate and distinct trust fund and the assets of the system must be for the exclusive benefit of the participants and their beneficiaries and of defraying reasonable expenses of investing the assets of the system. With respect to a system, an investment fiduciary shall not cause the system to engage in a transaction if he or she knows or should know that the transaction is any of the following, either directly or indirectly:

(a) A sale or exchange or a leasing of any property from the system to a party in interest for less than the fair market value, or from a party in interest to the system for more than the fair market value.

(b) A lending of money or other extension of credit from the system to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to the system with the provision of excessive security or at an unreasonably high rate of interest.

(c) A transfer to, or use by or for the benefit of, the political subdivision sponsoring the system of any assets of the system for less than adequate consideration.

(d) The furnishing of goods, services, or facilities from the system to a party in interest for less than adequate consideration, or from a party in interest to the system for more than adequate consideration.

(9) With respect to a system subject to this act, an investment fiduciary shall not do any of the following:

(a) Deal with the assets of the system in his or her own interest or for his or her own account.

(b) In his or her individual or any other capacity act in any transaction involving the system on behalf of a party whose interests are adverse to the interests of the system or the interest of its participants or participants' beneficiaries.

(c) Receive any consideration for his or her own personal account from any party dealing with the system in connection with a transaction involving the assets of the system.

(10) This section does not prohibit an investment fiduciary from doing any of the following:

(a) Receiving any benefit to which he or she may be entitled as a participant or participant's beneficiary of the

system.

(b) Receiving any reimbursement of expenses properly and actually incurred in the performance of his or her duties for the system.

(c) Serving as an investment fiduciary in addition to being an officer, employee, agent, or other representative of the political subdivision sponsoring the system.

(d) Receiving agreed upon compensation for services from the system.

(11) Except for an employee of a system, this state, or the political subdivision sponsoring a system, when acting in the capacity as an investment fiduciary, an investment fiduciary who is qualified under section 12c(1)(b) shall meet 1 of the following requirements:

(a) Be a registered investment adviser under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(b) Be a bank as defined under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(c) Be an insurance company qualified under section 16(3).

(12) An investment fiduciary shall not invest in a debt instrument issued by a foreign country that has been designated by the United States Department of State as a state sponsor of terror.

(13) A large sponsored system shall not pay the expenses for a person to travel outside this state from funds under its control unless 1 or more of the following conditions apply to the travel:

(a) It is required by legal mandate or court order or for law enforcement purposes.

(b) It is necessary to protect the health or safety of citizens of, or visitors to, this state or to assist other states in similar circumstances.

(c) It is necessary to produce budgetary savings or to increase revenues, including protecting existing federal funds or securing additional federal funds.

(d) It is necessary to secure specialized training for the person that is substantially related to performing the duties of the position and is not available within this state.

(14) Subject to section 13g, an investment fiduciary of a large sponsored system that invests or has invested in a hazardous waste deep disposal well facility regulated under part 111 or 121 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153 and 324.12101 to 324.12117, is subject to all of the following:

(a) The investment fiduciary shall not make an additional investment in the hazardous waste deep disposal well facility unless the investment is solely to prepare the property on which the hazardous waste deep disposal well facility is located for sale for purposes other than operation as a hazardous waste deep disposal well facility or similar hazardous facility.

(b) The investment fiduciary shall sell, redeem, divest, or withdraw all investments in the hazardous waste deep disposal well facility within 180 days after any of the following circumstances occur:

(i) The operator of the hazardous waste deep disposal well facility files for bankruptcy.

(ii) The sale, transfer, purchase, or acquisition of a controlling interest in the operator of the hazardous waste deep disposal well facility.

(iii) An Environmental Protection Agency action for a violation at the hazardous waste deep disposal well facility.

(iv) An Environmental Protection Agency revocation of the operator's license.

(v) An Environmental Protection Agency or department of environmental quality order to terminate operations at the hazardous waste deep disposal well facility.

(15) For a state unit, a representative of the office of retirement services in the department of technology, management, and budget shall appear before the senate and house of representatives appropriations committees on request of the committee chair to testify about the system's summary annual report required under subsection (3).

(16) The department of treasury shall post on its website an executive summary of each summary annual report submitted to the department of treasury under subsection (3)(l). The executive summary must include the applicable system's unfunded actuarial accrued liability for pension. The department of treasury shall submit each executive summary required under this subsection to the senate and the house of representatives appropriations committees and the senate and house fiscal agencies not less than 30 days after posting.

(17) As used in this section, "state unit" means a system established under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437, the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 273, Imd. Eff. Sept. 29, 2008 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2009, Act 84, Imd. Eff. Aug. 31, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014 ;-- Am. 2014, Act 545, Imd. Eff. Jan. 15, 2015 ;-- Am. 2016, Act 145, Imd. Eff. June 7, 2016 ;-- Am. 2016, Act 530, Eff. Mar. 29, 2017 ;-- Am. 2017, Act 203, Imd. Eff. Dec. 20, 2017 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL

16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1133a "MacBride principles" defined; duties of investment fiduciary; effect of unlawful principle.

Sec. 13a.

(1) As used in this section, "MacBride principles" means those requirements for companies doing business in Northern Ireland designed to do all of the following:

(a) Increase the representation of individuals from underrepresented religious groups in the work force including managerial, supervisory, administrative, clerical, and technical jobs.

(b) Provide adequate security for the protection of minority employees both at the workplace and while traveling to and from the workplace.

(c) Ban provocative religious or political emblems from the workplace.

(d) Publicly advertise all employment openings and make special recruitment efforts to attract applicants from underrepresented religious groups.

(e) Provide that layoff, recall, and termination procedures shall not in practice favor particular religious groupings.

(f) Abolish job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(g) Develop training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

(h) Establish procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

(i) Appoint senior management staff members to oversee the efforts to comply with these principles and the implementation of timetables to achieve these principles.

(2) With respect to investments qualified under section 14 or 20k, the investment fiduciary shall use all capital stock, common stock, preferred stock, American depository receipts, or any other evidence of residual ownership of a corporation in which it has investments to support either of the following:

(a) Shareholder resolutions and initiatives proposing the adoption of the MacBride principles for companies doing business in Northern Ireland.

(b) Shareholder resolutions and initiatives proposing to recognize efforts to end employment discrimination contained in any agreement between the government of the Republic of Ireland and the government of the United Kingdom, signed on November 15, 1985, which agreement is commonly referred to as the Anglo-Irish agreement.

(3) If a provision of the MacBride principles is found to be in violation of the law of the United Kingdom by a court in the United States or the United Kingdom, then the duties of the investment fiduciary prescribed by this section shall not apply to the extent that a shareholder resolution or initiative includes the provision that has been found unlawful.

**History:** Add. 1988, Act 343, Imd. Eff. Oct. 19, 1988 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

### 38.1133b Repealed. 1993, Act 214, Imd. Eff. Oct. 27, 1993.

**Compiler's Notes:** The repealed section pertained to encouragement or condonation of legally required discrimination; extension of deadlines for divestment of assets; developing and maintaining register of certain companies; and providing register to boards of retirement systems.

### 38.1133c Definitions; effort by fiduciary to identify scrutinized companies; assembly into scrutinized companies list; update and availability of list; procedures; report; effectiveness of section; exemption of fiduciary from conflicting statutory or common law obligations; liability; affirmative exclusion from federal sanctions; severability.

Sec. 13c.

(1) As used in this section:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(e) "Direct holdings" in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(f) "Fiduciary" means the Michigan legislative retirement system board of trustees for the Tier 1 plan for the Michigan legislative retirement system created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the treasurer of this state for the retirement systems created under all of the following acts:

(i) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(iii) The Tier 1 retirement plan available under the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(g) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the national congress party or any successor government formed on or after October 13, 2006 and does not include the regional government of southern Sudan.

(h) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(i) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(j) "Marginalized populations of Sudan" includes, but is not limited to, all of the following:

(i) The portion of the population in the Darfur region that has been genocidally victimized.

(ii) The portion of the population of southern Sudan victimized by Sudan's north-south civil war.

(iii) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

(iv) The Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions.

(v) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(m) "Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) "Power production activities" means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) "Scrutinized company" means any company, except a social development company and a company described in subsection (10) that is not complicit in the Darfur genocide, that meets the criteria in subparagraph (i), (ii), or (iii):

(i) The company has business operations that involve contracts with or provision of supplies or services to 1 or more of the following:

(A) The government of Sudan.

(B) Companies in which the government of Sudan has any direct or indirect equity share.

(C) Government of Sudan-commissioned consortia or projects.

(D) Companies involved in government of Sudan-commissioned consortia or projects and that have 1 or more of the following:

(I) More than 10% of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than 75% of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action.

(II) More than 10% of the company's revenues or assets linked to Sudan involve power production activities, less than 75% of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(ii) The company is complicit in the Darfur genocide.

(iii) The company supplies military equipment within Sudan, unless the fiduciary finds that the military equipment will not be used to facilitate offensive military actions in Sudan or the fiduciary finds that the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

(p) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations, undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business operations and of benefit to 1 or more marginalized populations of Sudan, or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) Within 90 days after the effective date of the amendatory act that added this section, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or could possibly have such holdings in the future. The efforts shall include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Sudan.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) The fiduciary shall update the scrutinized companies list on a quarterly basis based on evolving information from, among other sources, those sources listed in subsection (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list:

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as defined in subsection (1)(f).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to

divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of July 17, 2018, the fiduciary shall perform due diligence to prevent investment in any private equity fund where the offering memorandum or prospectus identifies the purpose of the private equity fund as investing in scrutinized companies with active business operations in Sudan. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on July 17, 2018 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file a publicly available report to the legislature that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the fiduciary shall file a publicly available report to the legislature and send a copy of that report to the United States presidential special envoy to Sudan that includes all of the following:

(a) A summary of correspondence with companies engaged by the fiduciary under this section.

(b) All investments sold, redeemed, divested, or withdrawn in compliance with this section.

(c) All prohibited investments under this section.

(d) Any progress made under subsection (5)(h).

(7) This section is effective until the first occurrence of any of the following:

(a) The United States Congress or the President of the United States declares that the Darfur genocide has been halted for at least 12 months.

(b) The United States revokes all sanctions imposed against the government of Sudan.

(c) The Congress or President of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

(d) The Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Sudan, or that has consistently obtained applicable licenses or approvals to conduct transactions with Sudan. If the fiduciary becomes aware at any

time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Sudan and has not received from the United States government applicable licenses or approvals to conduct transactions with Sudan, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

**History:** Add. 2008, Act 233, Imd. Eff. July 17, 2008 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018
**Compiler's Notes:** Former MCL 38.1133c, which pertained to encouragement or condonation of legally required discrimination; extension of deadlines for divestment of assets; developing and maintaining register of certain companies; and providing register to boards of retirement systems was repealed by Act 214 of 1993, Imd. Eff. Oct. 27, 1993.For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

## 38.1133d Definitions; scrutinized companies; identification by fiduciaries; assembling scrutinized companies list; update by fiduciary; procedure; report; effectiveness of section; conditions; liability of fiduciary; scrutinized company affirmatively excluded from federal sanctions; effect; severability.

Sec. 13d.

(1) As used in this section:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Iran, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Direct holdings" in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(e) "Fiduciary" means the Michigan legislative retirement system board of trustees for the Tier 1 plan for the Michigan legislative retirement system created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the treasurer of this state for the retirement systems created under all of the following acts:

(i) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675.

(ii) The Tier 1 retirement plan available under the judge's retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(iii) The Tier 1 retirement plan available under the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(f) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(g) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(h) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(i) "Iran" means the Islamic republic of Iran.

(j) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles.

(k) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(l) "Oil-related activities" includes, but is not limited to, owning rights to oil blocks; exporting, extracting,

producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(m) "Petroleum resources" means petroleum or natural gas.

(n) "Power production activities" means any business operation that involves a project commissioned by the government of Iran whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) "Scrutinized company" means any company not described in subsection (10) that has business operations that involve contracts with or provision of supplies or services to the government of Iran; companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran; or companies involved in consortiums and projects commissioned by the government of Iran and 1 or more of the following:

(i) More than 10% of the company's total revenues or assets are linked to Iran, and involve oil-related activities or mineral-extraction activities, and the company has failed to take substantial action.

(ii) The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20,000,000.00 or more, or any combination of investments of at least $10,000,000.00 each, which in the aggregate equals or exceeds $20,000,000.00 in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources.

(p) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations.

(2) Within 90 days after the effective date of the amendatory act that added this section, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or could possibly have such holdings in the future. The efforts may include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Iran.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Iran.

(d) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions against companies conducting business or investing in countries that are designated state sponsors of terror.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) The fiduciary shall update the scrutinized companies list on a quarterly basis based on evolving information from, among other sources, those sources listed in subsection (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list:

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as described in subsection (1)(e).

(b) For each company identified in subdivision (a) with only inactive business operations, not later than 60 days after the identification of the company, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, not later than 60 days after the company is newly identified, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its Iran-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations through substantial action or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company announces a plan of substantial action, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it fails to implement its plan of substantial action within the designated time frame. If, within 90 days following the fiduciary's first engagement, the company converts its active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have active business operations, and only while the company continues to have active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund or publicly traded fund that is not in the fiduciary's portfolio as of July 17, 2008, the fiduciary shall perform due diligence to prevent investment in any private equity fund or publicly traded fund where the offering memorandum or prospectus identifies a purpose of the private equity fund or publicly traded fund as investing in scrutinized companies with active business operations in Iran. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on July 17, 2008 creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file a publicly available report to the legislature that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the fiduciary shall file a publicly available report to the legislature that includes all of the following:

(a) A summary of correspondence with companies engaged by the fiduciary under this section.

(b) All investments sold, redeemed, divested, or withdrawn in compliance with this section.

(c) All prohibited investments under this section.

(d) Any progress made under subsection (5)(h).

(7) This section is no longer effective upon the occurrence of 1 or more of the following:

(a) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism.

(b) The United States revokes all sanctions imposed against the government of Iran.

(c) The Congress or President of the United States affirmatively and unambiguously states, through legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Iran, or that has consistently obtained applicable licenses or approvals to conduct transactions with Iran. If the fiduciary becomes aware at any time that a company that has not been affirmatively excluded from federal sanctions for business it conducts relating to Iran and has not received from the United States government applicable licenses or approvals to conduct transactions with Iran, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

**History:** Add. 2008, Act 232, Imd. Eff. July 17, 2008 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL

16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

**38.1133e Prohibited conduct by investment fiduciary, service provider, or covered associate of service provider; exceptions; definitions; official of governmental entity.**

Sec. 13e.

(1) An investment fiduciary shall not make a payment from the assets of a system to a service provider if the service provider or a covered associate of the service provider has made a contribution to an official of a governmental entity during the immediately preceding 24-calendar-month period, which period does not include any calendar month before March 28, 2013. An investment fiduciary, a service provider, or a covered associate of a service provider shall not do anything indirectly that, if done directly, would violate this subsection. This subsection does not apply under any of the following circumstances:

(a) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed $350.00 per election.

(b) The contribution was made by a service provider or covered associate of the service provider to an official of a governmental entity for whom the service provider or covered associate of the service provider was not entitled to vote at the time of the contribution and the contributions by the service provider or covered associate of the service provider to that official in the aggregate do not exceed $150.00 per election.

(c) The contribution was made to an official of a governmental entity by an individual more than 6 months before he or she became a covered associate of the service provider.

(d) The contribution was made to an official of a governmental entity by a covered associate of the service provider and all of the following requirements are met:

(i) The service provider discovers the contribution that violates this subsection on or before the expiration of 4 months after the contribution was made.

(ii) The contribution that violates this subsection was for $350.00 or less.

(iii) The covered associate of the service provider obtains the return of the contribution that violates this subsection on or before the expiration of 60 calendar days after the date of the discovery of the contribution under subparagraph (i).

(2) As used in this section:

(a) "Contribution" means a payment made under any of the following circumstances:

(i) For the purpose of influencing an election for federal, state, or local office.

(ii) For a debt incurred in connection with an election for federal, state, or local office.

(iii) For transition or inaugural expenses of a successful candidate for federal, state, or local office.

(iv) To a legal defense fund established by or on behalf of an official of a governmental entity.

(b) "Covered associate of the service provider" means any of the following:

(i) A general partner, managing member, agent, or officer of the service provider or any other individual with a similar status or function for the service provider.

(ii) An employee of the service provider who solicits a governmental entity on behalf of the service provider and any individual employed by the service provider who directly or indirectly supervises that employee.

(iii) A political action committee controlled by the service provider or by any individual described in subparagraph (i) or (ii). As used in this subparagraph, "political action committee" means a political committee or an independent committee as those terms are defined in the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(c) "Governmental entity" means this state or a political subdivision of this state. Governmental entity includes a system and an agency, authority, or instrumentality of this state or of a political subdivision of this state.

(d) "Official of a governmental entity" means an individual who, at the time of the contribution, was an incumbent, candidate, or successful candidate for an elective office in a governmental entity if the office meets any of the following requirements:

(i) Is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(ii) Has the authority to appoint an individual who is directly or indirectly responsible for or can influence the outcome of the hiring of a service provider by a system sponsored by the governmental entity.

(e) "Payment" means a gift, subscription, loan, advance, or deposit of money or anything of value.

(f) "Regulated investment adviser" means an investment adviser or covered associate of an investment adviser that is regulated under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(g) "Service provider" means a person retained to provide services to a system and includes investment advisers, consultants, custodians, accountants, auditors, attorneys, actuaries, administrators, and physicians. Service provider includes an investment service provider as defined in section 13(7). Service provider does not include a regulated investment adviser.

(3) For purposes of subsection (2)(d), an official of a governmental entity does not include an individual involved solely in the selection of a member of an investment committee described in section 13g.

**History:** Add. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014

### 38.1133f Breach of public trust by investment fiduciary or service provider; "service provider" defined.

Sec. 13f.

(1) An investment fiduciary or a service provider who is convicted of or who enters a nolo contendere plea accepted by a court for a felony or misdemeanor arising out of his or her service to a system is considered to have breached the public trust and shall reimburse the system for all costs, including legal defense fees, that were paid by the system. The system shall use reasonable efforts to collect any fees and costs recoverable under this subsection.

(2) As used in this section, "service provider" means that term as defined in section 13e.

**History:** Add. 2012, Act 347, Eff. Mar. 28, 2013

### 38.1133g Investment committee; establishment by large sponsored system; duties; recommendation; definitions.

Sec. 13g.

(1) Subject to a plan for adjustment, each large sponsored system shall establish an investment committee.

(2) The investment committee shall recommend to the governing board of the large sponsored system investment management decisions, including, but not limited to, all of the following:

(a) The development of investment goals and objectives, investment assumptions, and performance measurement standards consistent with the needs of the large sponsored system.

(b) The selection, monitoring, evaluation, and removal of custodians, investment managers, or any investment service providers.

(c) Asset allocation.

(d) Subject to a plan for adjustment, all calculations, actuarial assumptions, or assessments used by an actuary, including, but not limited to, those underlying the restoration of pension benefits, funding levels, and amortization of the restoration of pension benefits, and those underlying the determination of annual funding levels and amortization of annual funding levels, and recommended contributions to the large sponsored system in accordance with applicable law.

(e) Performing or ordering asset liability valuation studies for the qualified system not less frequently than every 2 years.

(f) Review and approval, before final issuance of all annual audits and actuarial and financial reports before finalization.

(g) Interpretation of the large sponsored system's governing documents, applicable laws, plans of adjustment approved by United States bankruptcy courts, and other financial determinations affecting the large sponsored system's funding or benefit levels.

(h) Based on annual actuarial valuation reports and any other projections or reports, as applicable from an actuary or other professional advisors, the determination of the extent of restoration of pension benefits all in conformance with a plan for adjustment.

(3) The investment committee shall do all of the following:

(a) Select, set compensation for and terms of employment of, and evaluate the qualified system's chief financial officer.

(b) Notwithstanding section 20h(6), approve a qualified system's summary annual report created under section

13 before the summary annual report is made public.

(4) The investment committee shall submit its recommendation under subsection (2) to the board. The board shall have not more than 45 days from the date of the submission, or 10 business days if the committee determines in good faith that emergency action is required, to approve or disapprove the recommendation. If the board does not act within 45 days or 10 days, as applicable, the recommendation is considered approved by the board and the chief financial officer shall implement the recommendation.

(5) If the board disapproves the investment committee's recommendation within 45 days or 10 days, as applicable, the decision shall be implemented under the plan for adjustment.

(6) As used in this section:

(a) "Board" means the governing board of a large sponsored system.

(b) "Chief financial officer" means the chief financial officer of a qualified system.

(c) "Investment committee" or "committee" means an investment committee established under subsection (1).

(d) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a city that has established a large sponsored system.

**History:** Add. 2014, Act 185, Imd. Eff. June 20, 2014

### 38.1134 Investment in stock or global security.

Sec. 14.

(1) An investment fiduciary shall not invest more than 70% of a system's assets in stock or the type of global security described in section 12b(4)(b). An investment fiduciary shall not invest in more than 5% of the outstanding stock of any 1 corporation, or invest more than 5% of a system's assets in the stock of any 1 corporation, unless otherwise provided in this act.

(2) An investment fiduciary may invest in stock or global securities under subsection (1) if it meets 1 of the following requirements:

(a) Is registered on a national securities exchange regulated under title I of the securities exchange act of 1934, 15 USC 78a to 78pp, or on an industry-recognized exchange outside the United States.

(b) Is on the national association of securities dealers automated quotation system or a successor to this system or is on an industry-recognized system outside the United States.

(c) Is issued pursuant to rule 144a under the securities act of 1933, 17 CFR 230.144a.

(3) Notwithstanding subsection (2), an investment fiduciary may designate an American depository receipt or the type of global security described in section 12b(4)(b) that satisfies the requirements of subsection (2) as an investment qualified under this section or as an investment in global securities qualified under section 20k.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

### 38.1135 Investment in investment companies.

Sec. 15.

An investment fiduciary may invest in investment companies registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64. The management company of the investment company shall have been in operation for at least 5 years and shall have assets under management of more than $500,000,000.00. An investment company may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which the liability of an investor does not exceed the amount of the investment under the laws of the United States or the applicable laws of the state, district, territory, or foreign country under which the investment company was established. An investment in an investment company shall be considered an investment in the underlying assets for all purposes under this act.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2012, Act 347, Eff. Mar. 28,

**38.1136 Investment in annuity investment contracts or participations in separate accounts of life insurance company; investment in general account of life insurer; requirements.**

Sec. 16.

(1) An investment fiduciary may invest in annuity investment contracts or participations in separate real estate, mortgage, bond, stock, or other special investment accounts of a life insurance company authorized to do business in this state. An investment in such a separate account shall be considered an investment in stock under section 14 only to the extent that the separate account's assets include stock, and then only for the purpose of determining the 70% maximum investment limit under section 14. An investment in such a separate account shall also be considered an investment in real or personal property under section 19(1), but only to the extent that the separate account's assets include real or personal property, and then only for the purpose of determining the 5% maximum investment limit under section 19(1).

(2) An investment fiduciary may invest in the general account of a life insurer authorized to do business in this state under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, but the total amount of assets of any 1 system invested in any 1 insurer shall not exceed 50% of the capital and surplus of the insurer.

(3) A life insurance company under this section shall have been in operation for at least 5 years and have assets under management of more than $500,000,000.00. The insurance company shall have a claims-paying ability rating no less than single A according to A.M. Best & company or AA- according to Duff & Phelps credit rating corp., and an overall company financial strength rating no less than Aa3 according to Moody's investors service, inc. or AA- according to Standard & Poor's ratings group.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

**38.1137 Other authorized investments; prohibited investments.**

Sec. 17.

(1) An investment fiduciary may invest in any of the following:

(a) Obligations issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state, district, or territory of the United States, which are not in default as to principal or interest, including, but not limited to, the following:

(i) Obligations secured by the mortgage of real property or the pledge of adequate collateral if, during any 3, including 1 of the last 2, of the 5 fiscal years immediately preceding the time of investment, the net earnings of the issuing, assuming, or guaranteeing entity available for fixed charges, as determined in accordance with standard accounting practice, shall have been not less than the total of its fixed charges for the year on an overall basis, nor less than 1-1/2 times its fixed charges for the year on a priority basis after excluding interest requirements on obligations subordinate to the issue as to security.

(ii) Equipment trust certificates of railroad companies organized under the laws of any state of the United States or of Canada or any of its provinces, payable within 20 years from their date of issue, in annual or semiannual installments, beginning not later than the fifth year after the date of issue, which certificates are a first lien on the specific equipment pledged as security for the payment of the certificates, and which certificates are either the direct obligations of the railroad companies or are guaranteed by the railroad companies, or are executed by trustees holding title to the equipment.

(iii) Obligations other than those described in subparagraphs (i) and (ii) and in section 12c(3). The aggregate investments made under this subparagraph shall not exceed 15% of the system's total assets.

(b) Obligations secured by a security interest in real or personal property and a lease obligation given by a solvent entity whose obligations would be qualified investments under the provisions of this act, if the investment does not exceed 100% of the appraised value of the property subject to the lease, and if all of the following requirements are met:

(i) The lease has an unexpired term equal to or exceeding the remaining term of the investment.

(ii) The lease is noncancelable unless the lessee first pays the sum of all unpaid rents due or to become due during the remaining lease term.

(iii) The lease provides for net rental payments equal to or exceeding the periodic payments on the investment.

(iv) The lease provides that the net rental payments are to be made without abatement or offset during the full term of the lease.

(v) The lease and the lease payments are assigned to the system, an agent of the system, or an independent trustee.

(c) Obligations issued, assumed, or guaranteed by the United States, its agencies, or United States government-sponsored enterprises.

(d) Obligations of a possession, territory, or public instrumentality of the United States, or of any state, city, county, township, village, school district, authority, or any other governmental unit having the power to levy taxes, or in obligations of other similar political units of the United States. These investments shall be of investment grade. These investments shall not be permitted if in the 3 preceding years the governmental unit has failed to pay its debt or any part of its debt or the interest on the debt. The aggregate investments made under this subdivision shall not exceed 5% of the system's total assets.

(e) Banker's acceptances, commercial accounts, certificates of deposit, or depository receipts issued by a bank, trust company, savings and loan association, or a credit union.

(f) Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 national rating services, and which matures within 270 days after the date of issue.

(g) Repurchase agreements for the purchase of securities issued by the United States government or its agencies and executed by a bank or trust company or by members of the association of primary dealers or other recognized dealers in United States government securities.

(h) Reverse repurchase agreements for the sale of securities issued by the United States government or its agencies and executed with a bank or trust company or with members of the association of primary dealers or other recognized dealers in United States government securities.

(i) Any investment otherwise permitted by this section in which the interest rate varies from time to time. Notwithstanding a provision of any other act to the contrary, a loan shall not be considered to be in violation of the usury statutes of this state by virtue of the fact that the loan is made on a variable interest rate basis.

(j) Obligations secured by any of the obligations described in subdivision (a) or (c).

(k) Dollar denominated obligations issued in the United States by foreign governments, supranationals, banks, or corporations. These investments shall be of investment grade.

(2) Except as otherwise provided in this act and except for obligations described in subsection (1)(c), an investment fiduciary shall not do any of the following:

(a) Invest in more than 5% of the outstanding obligations of any 1 issuer.

(b) Invest more than 5% of a system's assets in the obligations of any 1 issuer.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

## 38.1138 Investment in real estate or mortgages on certain leased real property.

Sec. 18.

An investment fiduciary may invest in real estate or mortgages on real property leased or to be leased to the United States government, or to a state, territory, agency, authority, or public instrumentality of the United States, if the investment does not exceed 100% of the appraised value of the property subject to the mortgage and if all of the following requirements are met:

(a) The lease has an unexpired term exclusive of optional renewal terms equal to or greater than the remaining term of the investment.

(b) The lease provides for net rental payments equal to or greater than the periodic payments on the investment.

(c) The lease and the lease payments are assigned to the system.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

**38.1139 Investment in real estate investment trust or real or personal property.**

Sec. 19.

(1) An investment fiduciary may invest up to 10% of a system's assets in publicly or privately issued real estate investment trusts or in real or personal property otherwise qualified pursuant to section 15, 16, or 20c.

(2) In addition to investments authorized under subsection (1), an investment fiduciary of a system having assets of more than $100,000,000.00 may do any of the following:

(a) Invest in, buy, sell, hold, improve, lease, or acquire by foreclosure or an agreement in lieu of foreclosure, real or personal property or an interest in real or personal property.

(b) Develop, maintain, operate, or lease the real or personal property referred to in subdivision (a).

(c) Form or invest in 1 or more limited partnerships, corporations, limited liability companies, trusts, or other organizational entities for which liability of an investor cannot exceed the amount of the investment under the laws of the United States or of any state, district, or territory of the United States or foreign country. The limited partnership, corporation, limited liability company, trust, or other organizational entity may invest in, buy, sell, hold, develop, improve, lease, or operate real or personal property, or originate a mortgage or invest in an annuity separate account that invests in real or personal property to hold title to, improve, lease, manage, develop, maintain, or operate real or personal property whether currently held or acquired after December 27, 1996. An entity formed under this subdivision has the right to exercise all powers granted to the entity by the laws of the jurisdiction of formation, including, but not limited to, the power to borrow money in order to provide additional capital to benefit and increase the overall return on the investment held by the entity.

(d) Invest in investments otherwise qualified pursuant to subsection (1).

(3) Except as otherwise provided in this section, the aggregate investments made under subsection (2) shall not exceed 10% of the assets of the system. The purchase price of an investment made under this section shall not exceed the appraised value of the real or personal property.

(4) If the investment fiduciary of a system is the state treasurer, investments described in subsection (1) or (2) may exceed 10% of the assets of the system.

(5) An investment qualified under this section in which the underlying asset is an interest in real or personal property constitutes an investment under this section for the purpose of meeting the asset limitations contained in this act. This subsection applies even though the investment may be qualified elsewhere in this act. Notwithstanding this subsection, an investment fiduciary may designate a real estate investment trust which satisfies the requirements of section 14(2) as an investment qualified under this section or as an investment in stock under section 14.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

**38.1139a State treasurer as investment fiduciary; investments in private equity; limitation; investment fiduciary not state treasurer; limitation.**

Sec. 19a.

(1) If the investment fiduciary is the state treasurer, investments in private equity shall not be more than 30% of the system's total assets. If the investment fiduciary is not the state treasurer and the system has assets of $1,000,000,000.00 or more, investments in private equity shall not be more than 10% of the system's total assets. An investment fiduciary described in this subsection may invest not more than an additional 5% of the system's assets in Michigan private equity only.

(2) An investment fiduciary of a system that has assets of $250,000,000.00 or more but less than $1,000,000,000.00 shall not invest more than 5% of the system's assets in Michigan private equity. An investment fiduciary may otherwise invest in private equity under section 20d.

**History:** Add. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

**38.1139b Deduction from employee compensation by public employer; automatic enrollment of employee; notice; investment alternatives; liability; definitions.**

Sec. 19b.

(1) A public employer may deduct from the compensation of an employee an amount for contribution to an individual account for the employee's benefit in a plan maintained under section 125, 401(k), 403(b), 408, 408A, or 457 of the internal revenue code of 1986, 26 USC 125, 401, 403, 408, 408A, and 457. A public employer may provide for automatic enrollment of an employee in a plan described in this subsection.

(2) Except as otherwise provided in this subsection, the public employer shall give written notice to a participating employee of any automatic enrollment at least 14 days before the initial deduction is made. The public employer shall include in the notice a description of the benefit the contribution provides and the right of the participating employee to cancel the contribution by instruction to the employer, including the procedure for giving the instruction. This subsection does not apply to a public employer for the purposes of a participating employee's participation in a plan established under section 1 of 1976 PA 306, MCL 38.1151, that provides for automatic contributions as provided under the internal revenue code of 1986.

(3) A public employer or plan official may provide investment alternatives for participating employees, including 1 or more default investment alternatives, for any contributions made to a plan described in subsection (1). A public employer or plan official is not liable for the actual decisions made by the employee with regard to the investment of any contribution under the plan or for the decisions made by the public employer or plan official on behalf of a participating employee with regard to the default investment of any contributions made for that employee to the plan if all of the following requirements are met:

(a) The plan allows the participating employee at least quarterly opportunities to select investments for any contributions made for that employee between investment alternatives available under the plan.

(b) For any type of default investment of any contributions for an employee, the default investment is comparable to the types of investment alternatives identified by the United States department of labor as qualified default investment alternatives.

(c) The participating employee is given notice of the default investment decisions that will be made in the absence of participating employee direction.

(d) The participating employee is given a description of all the investment alternatives available for the participating employee.

(e) The participating employee is given notice at least annually of all of the following:

(i) The actual default investments made by the public employer on behalf of the participating employee.

(ii) The right of a participating employee to cancel his or her continued participation in the plan.

(4) This section does not alter any existing responsibility of a public employer or other plan official for the selection of investment alternatives available for participating employees.

(5) As used in this section:

(a) "Automatic enrollment" means a plan provision under which the employee will have a specified contribution made to a plan described in subsection (1) equal to a compensation reduction that will be made for the employee unless the employee affirmatively elects no compensation reduction contributions or a compensation reduction contribution in another amount.

(b) "Public employer" means this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, or an institution of higher education.

**History:** Add. 2014, Act 242, Imd. Eff. June 27, 2014

**38.1140 Investment in secured loans; real property not considered encumbered; investment in part of obligation or participation interest in loan or group of loans; investment in real estate loan; investment in loan or loans or certificate of participation secured by loan or loans made on single family residential property; investment in certificates representing interest in mortgages or group of mortgages; limitations and restrictions; investment in second mortgage; investment with variable interest rate.**

Sec. 20.

(1) An investment fiduciary may invest in loans secured by any of the following:

(a) First liens upon improved or income bearing real property, including but not limited to improved agricultural

land, and improved business, industrial, and residential properties.

(b) First mortgages or deeds of trust on leasehold estates having an unexpired term equivalent to the term of the mortgage, inclusive of the term or terms that may be provided by enforceable options of renewal.

(c) First mortgages on unimproved real property, at least 60% of which real property is under contract of sale and that contract or contracts are pledged as additional collateral.

(2) Investments made in loans described in subsection (1) shall not exceed 80% of the appraised value of the real property at the time of the loan and shall not have a term longer than 35 years, except under the following conditions:

(a) A loan on improved land with permanent buildings used for agriculture shall be repayable by annual or more frequent installment payments sufficient to amortize 40% or more of the principal of the loan within a period of not more than 10 years.

(b) A loan on single family residential property shall be repayable by installment payments sufficient to amortize the entire principal of the loan within a period of not more than 30 years.

(3) Real property shall not be considered to be encumbered within the meaning of this section if the real property is subject to lease in whole or in part and under the terms of the lease rents or profits are reserved to the owner.

(4) An investment fiduciary may invest in a part of an obligation or a participation interest in a loan or a group of loans if the investment of each participant is not less than $50,000.00 at the time of investment, and if the entire indebtedness of which participation is a part would qualify under the provisions of this section.

(5) An investment fiduciary shall not invest in a real estate loan unless the investment fiduciary has reviewed a written appraisal of the real estate securing the loan.

(6) An investment fiduciary may invest in a loan or loans or certificates of participation secured by a loan or loans made on single family residential property in an amount not to exceed 95% of the appraised value, at the time of the loan, of the real estate offered as security, if the loan is secured by a mortgage, deed of trust, or other instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than 30 years, and the loan is insured by a private mortgage insurer licensed to do business in this state and approved by the federal home loan mortgage corporation and the federal national mortgage association.

(7) An investment fiduciary may invest in certificates representing an interest in a mortgage or group of mortgages if the certificates are insured or guaranteed by a private mortgage insurance company or the United States government or an agency or instrumentality of the United States government.

(8) The limitations and restrictions of subsections (1) to (7) shall not apply to loans that are made pursuant to the servicemen's readjustment act of 1944, chapter 268, 58 Stat. 284, insured under the provisions of the national housing act, chapter 847, 48 Stat. 1246, by the federal housing administration, nor to real estate loans which are guaranteed as to principal by the United States government or an agency or an instrumentality of the United States government.

(9) Notwithstanding subsection (1), an investment fiduciary may invest in a second mortgage if all of the following requirements are met:

(a) The total of the balance owing on the first mortgage and the amount of the second mortgage do not exceed 80% of the appraised value of the real property at the time of the second mortgage.

(b) The second mortgage does not have a term longer than 30 years.

(c) The investment fiduciary has the absolute right to pay the underlying first mortgage in part or in full at any time.

(d) The investment fiduciary assumes no liability for payment of the underlying first mortgage.

(10) An investment fiduciary may invest in any investment otherwise permitted by this section in which the interest rate varies from time to time. A loan shall not be considered to be in violation of the usury statutes of this state by virtue of the fact that the loan is made on a variable interest rate basis.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

### 38.1140a Investment in debt, warrant, or equity interest in small business, small business investment company, or venture capital firm; creation of small business investment companies or venture capital firms to invest in small businesses; limitation.

Sec. 20a.

(1) Except as provided in subsection (2), an investment fiduciary of a system having assets of more than $250,000,000.00 may invest not more than 2% of a system's assets in a debt, warrant, or equity interest in a small

business having more than 1/2 of the small business's assets or employees within this state, or in a debt, warrant, or equity interest in a small business investment company or venture capital firm having its principal office or more than 1/2 of its assets within this state, or the system may create, own, hold, buy, sell, operate, manage, and direct 1 or more small business investment companies or venture capital firms designed to invest in small businesses having more than 1/2 of their assets or employees within this state. An investment fiduciary may also join with a group composed of other public employee retirement systems, pension systems subject to the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829, financial institutions, corporations, or governmental agencies or instrumentalities to accomplish the purposes of this section. An investment in stock under this section shall be considered an investment in stock under section 14 only for the purpose of determining the 70% maximum investment limitation contained in section 14.

(2) If the investment fiduciary of a system is the state treasurer, investments described in subsection (1) may exceed 2% of the assets of the system, but shall not exceed 5% of the assets of the system.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1140b Deposits by investment fiduciary.

Sec. 20b.

An investment fiduciary may make interest bearing deposits with the treasurer of the political subdivision sponsoring the system or with the state treasurer, either of whom may then manage and invest the deposits in a collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets by the treasurer of the political subdivision sponsoring the system or by the state treasurer in accordance with this act.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1140c Financial institution, trust company, or management company retained as investment fiduciary; investment of system assets in collective investment fund, common trust fund, or pooled fund established and maintained by financial institution or management company; “financial institution” defined.

Sec. 20c.

(1) A financial institution, a trust company, a management company qualified under section 15, or any affiliate of a person described in this section if that affiliate qualifies as an investment fiduciary under section 13(11), retained to act as an investment fiduciary may invest the assets of a system in any collective investment fund, common trust fund, or pooled fund that is established and maintained for investment of those assets under federal or state statutes or rules or regulations or an applicable foreign law. The investment fiduciary of the collective investment fund, common trust fund, or pooled fund shall be a financial institution, a trust company, a management company qualified under section 13(11)(a), or an affiliate of 1 of these entities if that affiliate qualifies as an investment fiduciary under section 13(11)(a). The collective investment fund, common trust fund, or pooled fund may be established as a limited partnership, corporation, limited liability company, trust, or other organizational entity for which liability of any investor does not exceed the amount of the investment under the laws of the United States or the laws of the state, district, territory, or foreign country that applied to the organization of the collective investment fund, common trust fund, or pooled fund. A pool in which the state treasurer has administrative or investment authority and the investment pools of the municipal employees retirement system and retirement board created under the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, are not pooled funds for purposes of this section. An investment in a collective investment fund, common trust fund, or

pooled fund is considered an investment in the underlying assets of that fund for all purposes under this act.

(2) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 1997, Act 42, Imd. Eff. June 30, 1997 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1140d Investments not qualified under act.

Sec. 20d.

(1) An investment fiduciary of a system having assets of less than $250,000,000.00 may invest not more than 15% of the system's assets in investments not otherwise qualified under this act, except as qualified in section 19a, whether the investments are similar or dissimilar to those specified in this act.

(2) An investment fiduciary of a system having assets of $250,000,000.00 or more but less than $1,000,000,000.00 may invest not more than 20% of the system's assets in investments described in subsection (1).

(3) An investment fiduciary of a system having assets of $1,000,000,000.00 or more may invest not more than 25% of the system's assets in investments described in subsection (1).

(4) An investment fiduciary of a system who is the state treasurer may invest not more than 30% of the system's assets in investments described in subsection (1).

(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

(6) This section shall not be used to exceed a percentage of total assets limitation for an investment provided in any other section of this act.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000 ;-- Am. 2008, Act 425, Imd. Eff. Jan. 6, 2009 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013

**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1140e Loan of securities by investment fiduciary.

Sec. 20e.

(1) An investment fiduciary may loan bonds, stocks, or other securities if at the time the loan is executed, at least 102% of the full market value of the security loaned is secured by collateral of cash to be invested in 1 or more of the following:

(a) Securities graded in the top 4 major grades as determined by at least 1 national rating service, but not graded below the top 4 grades as determined by any of the national rating services, or determined by the investment fiduciary to be of comparable quality in the case of unrated securities.

(b) Repurchase agreements collateralized by securities graded in the top 4 major grades as determined by at least 1 national rating service, but not graded below the top 4 grades as determined by any of the national rating services, or determined by the investment fiduciary to be of comparable quality in the case of unrated securities.

(c) Irrevocable bank letters of credit.

(d) Securities issued or guaranteed by the United States government or an agency of the United States government.

(2) At all times during the term of a loan under subsection (1), the collateral shall be equal to not less than 100% of the full market value of the security loaned.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2000, Act 307, Imd. Eff. Oct. 16, 2000

### 38.1140f Transferring and holding securities.

Sec. 20f.

An investment fiduciary may use 1 or more nominees to facilitate transfer of a system's securities and may hold the securities in safekeeping with the federal reserve system, a clearing corporation, or a custodian bank which is a member of the federal reserve system.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

### 38.1140g Investment in securities exempt from taxes.

Sec. 20g.

Notwithstanding any other provision of this act, investment in securities wholly or partially exempt from income or other taxes levied by the United States shall be made only at taxable-equivalent yields or returns available in the marketplace on otherwise comparable securities at the time the investment decision is made.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982

### 38.1140h Applicable law; retention of financial records; "financial records" defined; disclosure of certain information; actuarial valuation; supplemental actuarial analysis; "proposed pension benefit change" defined; availability and publication of summary annual report.

Sec. 20h.

(1) In addition to the provisions of this act, a system is subject to the applicable accounting, auditing, and reporting requirements contained in the following acts and parts of acts:

(a) 1919 PA 71, MCL 21.41 to 21.55.

(b) The uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) Section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(2) A system shall retain its financial records for a minimum period of 6 years from the date of the creation of the record unless state or federal law requires a longer retention period. As used in this subsection, "financial records" includes, but is not limited to, records pertaining to expenditures for professional training and education, including travel expenditures, by or on behalf of system board members that are paid by the system.

(3) Except as otherwise provided in this subsection, information regarding the calculation of actual or estimated retirement benefits for members of the system is exempt from disclosure by the system or the political subdivision sponsoring the system pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243. Upon a majority vote of the governing body of the political subdivision sponsoring the system, the system shall provide the designated representative of the political subdivision with a reasonable opportunity to inspect, copy, or receive copies of all information regarding the calculation of actual or estimated retirement benefits for members of the system. The system may require that information provided by the system under this subsection be provided only on a promise of confidentiality by the political subdivision sponsoring the system. A system may make reasonable rules to ensure the confidentiality of records exempt from disclosure under applicable state and federal law. The system may charge a fee under this subsection in accordance with section 4 of the freedom of information act, 1976 PA 442, MCL 15.234. All fees and expenses incurred by the political subdivision sponsoring the system that are related to this subsection must be borne by the political subdivision and must not be deducted from or offset against

the political subdivision's required pension contributions to the system.

(4) Except as otherwise provided in this subsection, a system shall have an annual actuarial valuation with assets valued on a market-related basis. The actuarial present value of total projected benefits must include all pension benefits to be provided by the system to members or beneficiaries under the terms of the system and any additional statutory or contractual agreements to provide pension benefits through the system that are in force at the actuarial valuation date, including, but not limited to, service credits purchased by members, deferred retirement option plans, early retirement programs, and postretirement adjustment programs. A system that has assets of less than $20,000,000.00 is only required to have an actuarial valuation as required under this subsection done every other year.

(5) A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. System assets must not be used for any actuarial expenses related to the supplemental actuarial analysis under this subsection. The supplemental actuarial analysis must be provided by the system's actuary and must include an analysis of the long-term costs associated with any proposed pension benefit change. The supplemental actuarial analysis must be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, "proposed pension benefit change" means a proposal to increase the amount of pension benefits received by persons entitled to pension benefits under the system. Proposed pension benefit change does not include a proposed change to a health care plan or health benefits.

(6) The system shall make the summary annual report created under section 13 available to the plan participants and beneficiaries and the citizens of the political subdivision sponsoring the system. If the system has a website, the system shall publish the summary annual report on the website. If the system does not have a website, the political subdivision sponsoring the system shall publish the summary annual report on a website that the political subdivision has created or may create.

**History:** Add. 1982, Act 55, Imd. Eff. Apr. 6, 1982 ;-- Am. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2002, Act 728, Imd. Eff. Dec. 30, 2002 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2016, Act 530, Eff. Mar. 29, 2017 ;-- Am. 2017, Act 203, Imd. Eff. Dec. 20, 2017

### 38.1140i Repealed. 2000, Act 307, Imd. Eff. Oct. 16, 2000.

**Compiler's Notes:** The repealed section pertained to guaranteed repayment of loans.

### 38.1140j Investment in derivatives.

Sec. 20j.

(1) Subject to qualification elsewhere in this act, an investment fiduciary may invest in any of the following:

(a) A derivative that hedges positions of a nonderivative component of a portfolio that clearly reduces a defined risk.

(b) A derivative that replicates the risk/return profile of an asset or asset class, provided the asset or asset class is permitted in other sections of this act.

(c) A derivative that rebalances the country or asset class exposure of a portfolio.

(d) A derivative in which the investment fiduciary has examined the price, yield, and duration characteristics in all market environments both at the time of investment and on an ongoing basis.

(e) A commingled or pooled investment fund that uses derivatives, if the fund's use of derivatives is consistent with the guidelines outlined in this section.

(f) Over-the-counter derivatives if, in the case of an over-the-counter security, a minimum of 2 competing bids or offers are obtained. All counter party risk in over-the-counter derivative transactions shall be examined at the time of investment and on an ongoing basis.

(2) The aggregate market value of the underlying security, future, or other instrument or index made under this section shall not exceed 15% of the assets of the system. For purposes of the asset limitation in this section only, "derivatives" does not include:

(a) Asset backed pools, mortgage backed pools, or collateralized mortgage obligations that are otherwise

qualified under this act and are no more exposed to prepayment risk or interest rate risk than the underlying collateral including planned amortization classes and sequential-pay collateralized mortgage obligations.

(b) Convertible bonds, convertible preferred stock, rights or warrants to purchase stock or bonds or notes or partnership interests, floating rate notes, zero coupon securities, stripped principal securities, or stripped interest securities, which items are otherwise qualified under this act.

(c) Exchange-listed derivatives trading on a daily basis and settling in cash daily or having a limited and fully defined risk profile at an identified, fixed cost, including futures contracts and purchased options.

(d) Currency forwards trading on a daily basis and settling in cash daily or having a limited and fully defined risk profile at an identified, fixed cost.

(3) Notwithstanding any other provision of this act to the contrary, an investment fiduciary shall not invest in derivatives for the purpose of leveraging a portfolio or shorting securities as a sole investment.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

### 38.1140k Investment in global securities; prohibited conduct.

Sec. 20k.

(1) Notwithstanding a percentage of total assets limitation for an investment provided in any other section of this act, an investment fiduciary who is the state treasurer or the investment fiduciary of a system that has assets of $2,000,000,000.00 or more may invest not more than 30% of a system's assets in global securities. An investment fiduciary of a system that has assets of less than $2,000,000,000.00 and who is not the state treasurer may invest not more than 20% of a system's assets in global securities. Except as otherwise provided in this act, an investment fiduciary shall not do any of the following:

(a) Invest in more than 5% of the outstanding global securities of any 1 issuer.

(b) Invest more than 5% of a system's assets in the global securities of any 1 issuer.

(2) Investments in global securities under this section shall be made only by investment fiduciaries described in section 13(11) who have demonstrated expertise in investments of that type.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013
**Compiler's Notes:** For transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to Michigan investment board and transfer of powers and duties of investment advisory committee created under MCL 16.191 to Michigan investment board , see E.R.O. No. 2018-5, compiled at MCL 38.1176.

### 38.1140l Financial or proprietary information.

Sec. 20l

(1) A record or portion of a record, material, or other data received, prepared, used, or retained by an investment fiduciary in connection with the investment of assets of a system that relates to financial or proprietary information pertaining to a portfolio company in real estate or alternative investments in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential; or that relates to financial or proprietary information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential is not subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) A document to which the investment fiduciary is a party evidencing an investment is not considered financial or proprietary information that may be exempt from disclosure pursuant to subsection (1).

(3) As used in this section, "financial or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the portfolio company or the investment fiduciary significant competitive harm. Financial or proprietary information includes but is not limited to financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

**History:** Add. 1996, Act 485, Imd. Eff. Dec. 27, 1996

### 38.1140m Employer contribution.

Sec. 20m.

(1) The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of any system shall confirm in the annual actuarial valuation required under section 20h and the summary annual report required under section 13 that each system under this act provides for the payment of the required employer contribution as provided in this section and shall confirm in the summary annual report that the system has received the required employer contribution for the year covered in the summary annual report. The required employer contribution is the actuarially determined contribution amount. An annual required employer contribution in a system under this act shall consist of a current service cost payment and a payment of at least the annual accrued amortized interest on any unfunded actuarial liability and the payment of the annual accrued amortized portion of the unfunded principal liability. For fiscal years that begin before January 1, 2006, the required employer contribution shall not be determined using an amortization period greater than 40 years. Except as otherwise provided in this section, for fiscal years that begin after December 31, 2005, the required employer contribution shall not be determined using an amortization period greater than 30 years. For the Tier 1 retirement plan under the state employees' retirement system, created under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the Michigan public school employees' retirement created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437; and the Michigan state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675, only, for the fiscal year beginning October 1, 2006, the contribution for the unfunded actuarial accrued liability shall be equal to the product of the assumed real rate of investment return times the unfunded actuarial accrued liability. In a plan year, any current service cost payment may be offset by a credit for amortization of accrued assets, if any, in excess of actuarial accrued liability. A required employer contribution for a system administered under this act shall allocate the actuarial present value of future plan benefits between the current service costs to be paid in the future and the actuarial accrued liability. The governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system shall act upon the recommendation of an actuary and the board and the actuary shall take into account the standards of practice of the actuarial standards board of the American academy of actuaries in making the determination of the required employer contribution.

(2) Subsection (1) applies to a large sponsored system except as otherwise provided in a plan for adjustment. As used in this subsection, "plan for adjustment" means that term as defined in section 13g.

**History:** Add. 2002, Act 728, Imd. Eff. Dec. 30, 2002 ;-- Am. 2007, Act 22, Imd. Eff. June 26, 2007 ;-- Am. 2012, Act 347, Eff. Mar. 28, 2013 ;-- Am. 2014, Act 185, Imd. Eff. June 20, 2014 ;-- Am. 2018, Act 676, Imd. Eff. Dec. 28, 2018

### 38.1141 Removal of member of board or body.

Sec. 21.

(1) Subject to this section, the governing board vested with the general administration, management, and operation of a system or other decision-making body that is responsible for implementation and supervision of a system may remove a member of the board or body as provided in subsection (2) by any of the following:

(a) A unanimous vote of all of the members of the board or body, other than the member who is the subject of the vote for removal.

(b) An order of a circuit court with jurisdiction entered in an appropriate action authorized by a majority vote of the members of the board or body.

(c) The process for the removal of a member of the board or body that is contained in the system's plan provisions if that process is less restrictive than either process provided for in subdivision (a) or (b).

(2) The governing board vested with the general administration, management, and operation of a system or other

decision-making body that is responsible for implementation and supervision of a system shall give notice and hold a hearing on the removal of a member of that board or body for any of the following reasons:

(a) For an elected member of the board or body, upon receipt of a petition requesting the removal of the member, which petition is signed by 2/3 of the individuals eligible to vote in the election of the member of the board or body.

(b) The member is legally incapacitated from executing his or her duties as a member of the board or body and neglects to perform those duties.

(c) The member has committed a material breach of the system provisions or system policies or procedures and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(d) The member is convicted of a violation of law and the removal of the member is in the interests of the system or the interest of its participants or participants' beneficiaries.

(3) Upon the removal of a member of a board or body under this section before expiration of the member's term, a new successor member shall fill the vacancy as follows:

(a) For an elected member of the board or body, by election in the same manner as the removed member for the remainder of that term of office.

(b) For an appointed member of the board or body, by appointment by the appointing authority of the removed member for the remainder of that term of office.

(c) For an ex officio member serving by virtue of his or her office, by appointment by the governing body of the political subdivision sponsoring the system until the time that a new individual is elected or appointed to the office from which the removed member served as a member.

(4) An individual who is removed from office as a member of a board or body under this section may appeal the removal to the circuit court with jurisdiction if the removal is by the board or body or, if the removal is by the circuit court, to the appropriate court with jurisdiction. A successor member of a board or body may be elected or appointed during the pendency of an appeal of a removed member under this subsection until the appeal is withdrawn or there is a final judgment in the matter.

(5) If, upon an appeal under subsection (4), the court finds that the petition for removal of the member was filed in bad faith and that removal is contrary to the interests of the system or the interest of its participants or participants' beneficiaries, the court may order that the individuals seeking the removal of the member pay all or a portion of the costs of the proceedings, including reasonable attorney fees.

**History:** Add. 2012, Act 347, Eff. Mar. 28, 2013

## COUNCIL ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

### Act 520 of 1980

38.1141-38.1148 Expired. 1980, Act 520, Eff. Sept. 30, 1986;—Repealed, 1988, Act 394, Eff. Jan. 1, 1993.

**Compiler's Notes:** Sec. 8 of Act 520 of 1980, being MCL 38.1148 of the Michigan Compiled Laws, provided that "This act shall expire September 30, 1986." In OAG, 1987-1988, No. 6438 (May 21, 1987), the Attorney General ruled that because the title to Act 520 of 1980 gave "no notice of the repeal of the Act," Sec. 8 "was enacted in violation of Const 1963, art 4, § 24, and is void."

## DEFERRED COMPENSATION PLAN

### Act 306 of 1976

AN ACT to authorize the administration of a deferred compensation plan; to provide for its operation; to authorize the investment and disbursement of the funds of the plan; and to prescribe powers and duties of certain state officers and agencies.

**History:** 1976, Act 306, Imd. Eff. Oct. 28, 1976 ;-- Am. 1996, Act 96, Imd. Eff. Feb. 28, 1996

*The People of the State of Michigan enact:*

### 38.1151 Deferred compensation plan; administration and investment.

Sec. 1.

(1) Until October 1, 1996, the department of civil service may implement and administer a deferred compensation plan that may include a fixed-income plan and a stock plan option. The plan, if implemented, shall be established by resolution by the state civil service commission. The resolution shall set forth the purpose, eligibility requirements, membership, qualifications, and administration of the plan.

(2) Beginning on October 1, 1996, the state treasurer is responsible for the administration and investment of the deferred compensation plan.

**History:** 1976, Act 306, Imd. Eff. Oct. 28, 1976 ;-- Am. 1996, Act 96, Imd. Eff. Feb. 28, 1996
**Compiler's Notes:** For transfer of powers and duties set forth in Act. No. 306 of the Public Acts of 1976 to the state treasurer, see E.R.O. No. 1996-5, compiled at MCL 38.1171 of the Michigan Compiled Laws. For transfer of powers and duties of the department of civil service related to employee benefit programs from the department of civil service to the director of the department of management and budget, see E.R.O. No. 1996-5, compiled at MCL 38.1171 of the Michigan Compiled Laws.

## QUALITY RECOGNITION SYSTEM

### Act 325 of 1978

AN ACT to provide for and implement a suggestion awards program and a quality recognition system; and to prescribe the duties of certain state departments and agencies.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998
**Compiler's Notes:** For transfer of powers and duties of the department of civil service related to the suggestion awards program from the department of civil service to the director of the department of management and budget, see E.R.O. No. 1996-5, compiled at MCL 38.1171 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

### 38.1161 Definitions.

Sec. 1.

As used in this act:

(a) "Board" or "recognition board" means the recognition board established in section 2.

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

(c) "Director" means the director of the department or his or her designee.

(d) "Process improvement" is a recommended improvement that is concisely written and identifies a problem, situation, or opportunity for improvement, together with a recommendation for a remedy. The improvement must be implemented and bring about measurable organizational success for this state.

(e) "Retired state employee" means an individual who has retired from state service and is receiving a retirement benefit from either the defined benefits or defined contributions retirement plans sponsored by this state.

(f) "State employee" means a classified member of the state civil service or an unclassified employee of the executive, legislative, or judicial branch of state government.

(g) "Value added behavior" means a positive contribution by a person that advances the implementation of a process improvement or otherwise assists in the advancement of overall organizational success.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998
**Compiler's Notes:** For transfer of powers and duties of the department of civil service related to the suggestion awards program from the

department of civil service to the director of the department of management and budget, see E.R.O. No. 1996-5, compiled at MCL 38.1171 of the Michigan Compiled Laws.For transfer of powers and duties of office of state employer and department of management and budget related to administration of state employee benefit programs and quality recognition system to department of civil service, see E.R.O. No. 2002-9, compiled at MCL 38.1172 of the Michigan Compiled Laws.

### 38.1162 Recognition board; establishment; appointment and terms of members; vacancy; election of chairperson; duties of board.

Sec. 2.

(1) The department shall establish a recognition board within the department to consist of 5 members appointed by the director. The director shall select the members from a list of state employees and retired state employees. Not more than 1 member shall be from the same state department. Not more than 1 member shall be a retired state employee.

(2) The terms of the members, except to fill vacancies occurring other than by expiration of term, shall be 2 years from the date of appointment. A vacancy in the office of a member, occurring other than by expiration of term, shall be filled by the director for the balance of the term. The members shall elect a chairperson of the board.

(3) The board shall do all of the following:

(a) Develop the guiding principles for employee, retired state employee, and department and agency recognition, including the establishment of guidelines for the type of recognition to be granted within the limits of section 5.

(b) Perform the final review of process improvements, value added behaviors, and the resulting recognition actions valued at amounts greater than $500.00 and any actions that receive a request for reconsideration.

(c) Prepare the rules for promulgation by the department under section 6 for the operation of the recognition system described under this act.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998
**Admin Rule:** R 38.901 et seq. of the Michigan Administrative Code.

### 38.1163 Recognition administrator; appointment; responsibilities; report.

Sec. 3.

(1) The director shall appoint a recognition administrator from the employees of the department.

(2) The recognition administrator shall be responsible for all of the following:

(a) The administrative supervision and promotion of the employee, retired state employee, and department and agency recognition systems in a cooperative relationship with the recognition board and all state departments.

(b) The provision of support services to all state department and agency recognition systems.

(c) The final review of process improvements, value added behaviors, and the resulting recognition actions valued at $500.00 or less.

(d) The submission of quarterly reports on recognition activities to the appropriation committees in the house of representatives and the senate, to the house and senate fiscal agencies, and to the department.

(e) The submission to the board of process improvements, value added behaviors, and the resulting recognition actions valued at more than $500.00.

(3) Information to be contained in the report required under subsection (2)(d) shall be established by the recognition board.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998

### 38.1164 Committee; establishment by head of each department; appointment of members; review; report.

Sec. 4.

(1) The head of each state department shall establish a committee with an uneven number of members who are employees of that state department and who shall be appointed by the head of that state department. The committee shall have no less than 3 members and not more than 11 members based on the need as determined by the head of the state department. The committee shall review the process improvements, value added behaviors, and the resulting recognition actions of significant impact that pertain to the operations of that state department.

(2) The committee without undue delay shall report to the recognition administrator concerning each process improvement and value added behavior reviewed and the resulting recognition action taken or recommended. Information to be contained in the report shall be established by the board.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998
**Admin Rule:** R 38.901 et seq. of the Michigan Administrative Code.

### 38.1165 Recognition; types; distribution.

Sec. 5.

The types of recognition granted under section 2 or 3 shall be developed in guidelines by the recognition board. Recognition shall be distributed in an equitable fashion to all state employees and retired state employees who are involved in recommending, initiating, and implementing the improvement and to those who demonstrate value added behaviors. The tangible value of recognition for any single process improvement implemented shall not exceed $5,000.00.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1986, Act 310, Eff. Mar. 31, 1987 ;-- Am. 1998, Act 119, Eff. July 1, 1998

### 38.1166 Rules.

Sec. 6.

The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act, and to equitably phase out the current suggestion system. Operational guidelines shall be established and implemented by approval of the recognition board.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998
**Admin Rule:** R 38.901 et seq. of the Michigan Administrative Code.

### 38.1167 Staff to assist board and recognition administrator.

Sec. 7.

The department shall provide the necessary staff to assist the board and the recognition administrator in the performance of their duties under this act.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998

### 38.1168 Cost of administering act and recognition.

Sec. 8.

The cost of administering this act and the granting of recognition under section 5 shall be included within the annual appropriation of the department.

**History:** 1978, Act 325, Imd. Eff. July 11, 1978 ;-- Am. 1998, Act 119, Eff. July 1, 1998

### 38.1169 Retired state employee as recipient of recognition; effect.

Sec. 9.

A retired state employee who is the recipient of recognition under this act will be treated as a self-employed person for tax purposes and shall receive recognition from the appropriated fund for the recognition system as administered by the department. The retirement system from which the state employee is a retirant shall not be held responsible for any payment, and no adjustment or recalculation of benefit level will occur due to a retired state employee receiving recognition under this system.

**History:** Add. 1998, Act 119, Eff. July 1, 1998

## EXECUTIVE REORGANIZATION ORDER

## E.R.O. No. 1996-5

### 38.1171 Transfer of responsibility for deferred compensation plans to state treasurer; transfer of suggestion awards program and other employee benefit programs from department of civil service to the department of management and budget.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article XI, Section 5, of the Constitution of the State of Michigan of 1963 vests in the Michigan Civil Service Commission, inter alia, plenary authority to fix rates of compensation for all classes of positions, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service; and

WHEREAS, the Civil Service Commission, as provided in Article XI, Section 5, of the Constitution of the State of Michigan of 1963, and in Act No. 306 of the Public Acts of 1976, being Section 38.1151 of the Michigan Compiled Laws, has authorized the Department of Civil Service to implement and administer (1) the State of Michigan Deferred Compensation Plan I under Section 457 of the Internal Revenue Code and (2) the Michigan State Employees Deferred Compensation Plan II under Section 401(k) of the Internal Revenue Service Code (collectively, the "Deferred Compensation Plans" or "Plans"); and

WHEREAS, through Act No. 96 of the Public Acts of 1996, which amends Act No. 306 to transfer the administration and investment of the Deferred Compensation Plans from the Department of Civil Service to the State Treasurer and which also withdraws as of October 1, 1996 all authority with respect to the Deferred Compensation Plans from the Department of Civil Service, the Legislature has declared that the Deferred Compensation Plans can be more effectively administered by the State Treasurer; and

WHEREAS, it is most beneficial to the participants in the Deferred Compensation Plans if the State Treasurer performs all statutory duties relative to the Deferred Compensation Plans, including determining the purpose, eligibility requirements, membership and qualifications for the Plans, along with the administrative, investment or

fiduciary functions relative to the Plans; and

WHEREAS, the Department of Civil Service established, implemented and administers a Suggestion Awards Program as provided in Act No. 325 of the Public Acts of 1978, as amended, being Sections 38.1161 et seq., of the Michigan Compiled Laws; and

WHEREAS, the Civil Service Commission has authorized the Department of Civil Service, under the direction of the State Personnel Director, to implement and administer additional employee benefit programs providing for the following services:

a. a health screening program for employees and retirees;

b. group insurance plans for medical, dental, vision, disability and life benefits;

c. a health awareness program;

d. an employee service program for employees and their families; and

e. disability management coordination (collectively, the "Employee Benefit Programs").

WHEREAS, the Suggestion Awards Program and the Employee Benefit Programs may be more effectively and efficiently administered and coordinated within the Department of Management and Budget.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEPARTMENT OF TREASURY

1. All the authority, powers, duties, functions, and responsibilities set forth in Act No. 306 of the Public Acts of 1976, as amended, are hereby transferred to the State Treasurer by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All records, personnel, property, and funds of the Deferred Compensation Plans used, held, employed, available to or to be made available to the activities, powers, duties, functions and responsibilities transferred to the State Treasurer by this Order are hereby transferred to the Department of Treasury.

3. All rules, orders, contracts, investment contracts (including Guaranteed Investment Contracts), investment guidelines, and other agreements relating to the Deferred Compensation Plans lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

4. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

5. The State Treasurer, in cooperation with the State Personnel Director, shall provide executive direction and supervision for the implementation of the transfer. The State Treasurer shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. Nothing herein shall diminish or limit in any manner the authority of the Civil Service Commission to exercise any authority granted to it under Article XI, Section 5, of the Constitution of the State of Michigan of 1963. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under its plenary authority granted by Article XI, Section 5, of the Constitution of the State of Michigan of 1963 shall be transferred without the approval of the Civil Service Commission.

II. DEPARTMENT OF MANAGEMENT AND BUDGET

1. All the powers, duties, functions, and responsibilities of the Department of Civil Service related to the Employee Benefit Programs are hereby transferred from the Department of Civil Service to the Director of the Department of Management and Budget by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All the powers, duties, functions, and responsibilities of the Department of Civil Service related to the Suggestion Awards Program set forth in Act No. 325 of the Public Acts of 1978, as amended, being Sections 38.1161 et seq., of the Michigan Compiled Laws, are hereby transferred from the Department of Civil Service to the Director of the Department of Management and Budget by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All records, personnel, property, and funds of the Suggestion Awards Program and the Employee Benefit Programs used, held, employed, available to or to be made available to the Department of Civil Service for the powers, duties, functions and responsibilities transferred to the Director of the Department of Management and Budget by this Order are hereby transferred to the Department of Management and Budget.

4. All rules, orders, contracts, agreements or other obligations relating to the Suggestion Awards Program and the Employee Benefit Programs lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

5. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

6. The Director of the Department of Management and Budget, in cooperation with the State Personnel Director, shall provide executive direction and supervision for the implementation of the transfer. The Director of

the Department of Management and Budget shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order. The Director may, in his discretion, assign any functions transferred by Section II of this Order to the Office of the State Employer.

7. Nothing herein shall diminish or limit in any manner the ability of the Civil Service Commission to exercise any authority granted to it under Article XI, Section 5, of the Constitution of the State of Michigan of 1963. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under its plenary authority granted by Article XI, Section 5, of the Constitution of the State of Michigan of 1963 shall be transferred without the approval of the Civil Service Commission.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days from the filing of this Order.

**History:** 1996, E.R.O. No. 1996-5, Eff. July 29, 1996

**Compiler's Notes:** For transfer of powers and duties of office of state employer and department of management and budget related to administration of state employee benefit programs and quality recognition system to department of civil service, see E.R.O. No. 2002-9, compiled at MCL 38.1172 of the Michigan Compiled Laws.For transfer of powers and duties of office of state employer related to administration of state employee long-term disability plan and employee service program from office of state employer to Michigan civil service commission, see E.R.O. No. 2016-5, compiled at MCL 38.1175.

## EXECUTIVE REORGANIZATION ORDER

## E.R.O. No. 2002-9

### 38.1172 Transfer of powers and duties of office of state employer and department of management and budget related to administration of state employees benefit programs and quality recognition system to department of civil service by type II transfer.

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article XI, Section 5, of the Constitution of the State of Michigan of 1963 empowers the Michigan Civil Service Commission to fix rates of compensation for all classes of positions, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service; and

WHEREAS, the Office of State Employer currently administers the state employee benefit programs; and

WHEREAS, Executive Order 1996-5, being Section 38.1171 of the Michigan Compiled Laws, transferred the state employee benefit programs from the Department of Civil Service to the Department of Management and Budget, and the Director of the Department of Management and Budget delegated their administration to the Office of the State Employer; and

WHEREAS, the Office of the State Employer also administers the employee Quality Recognition System; and

WHEREAS, the state employee benefit programs and the Quality Recognition System may be more effectively and efficiently administered and coordinated within the Department of Civil Service following the statewide implementation of the Human Resource Management Network.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. The "Department of Civil Service" means the principal department of state government created by Section 200 of Act No. 380 of the Public Acts of 1965, being Section 16.300 of the Michigan Compiled Laws. Pursuant to Section 201 of Act No. 380 of the Public Acts of 1965, being Section 16.301 of the Michigan Compiled Laws, the

head of which is the Civil Service Commission.

B. The "Department of Management and Budget" means the principal department of state government created by Section 121 of Act No. 431 of the Public Acts of 1984, being Section 18.1121 of the Michigan Compiled Laws.

C. The "state employee benefit programs" means:

• the health screening program;

• the group insurance plans for medical, dental, vision, disability, life, and long-term care benefits;

• pretax benefit programs; and

• the COBRA and other insurance continuation programs.

D. The "Office of the State Employer" means the office created within the Department of Management and Budget by Executive Order 1979-5, whose duties include, but are not limited to, those assigned by Executive Orders 1979-5, 1981-3 and 1988-6.

E. The "Quality Recognition System" means the suggestion awards program and quality recognition system authorized by Act No. 325 of the Public Acts of 1978, as amended, being Sections 38.1161 et seq. of the Michigan Compiled Laws

II. TRANSFER

All of the authority, powers, duties, functions, and responsibilities of the Office of the State Employer and the Department of Management and Budget related to the administration of state employee benefit programs and the Quality Recognition System are hereby transferred from the Office of the State Employer and the Department of Management and Budget to the Department of Civil Service by Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, to the Department of Civil Service.

III. MISCELLANEOUS

A. The State Personnel Director, in cooperation with the Director of the Office of the State Employer and the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of the transfer.

B. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system.

C. All records, personnel, property, and funds of the state employee benefit programs and Quality Recognition System used, held, employed, available to, or to be made available to the Office of the State Employer and the Department of Management and Budget for the powers, duties, functions, and responsibilities transferred to the Department of Civil Service by this Order are hereby transferred to the Department of Civil Service.

D. All rules, orders, contracts, agreements, or other obligations relating to the state employee benefit programs and Quality Recognition System lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

E. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this order shall not abate by reason of the taken effect of this order.

F. Nothing contained in this Order shall diminish or limit the authority of the Civil Service Commission to exercise any authority granted to it under Article XI, Section 5 of the Constitution of the State of Michigan of 1963.

G. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

**History:** 2002, E.R.O. No. 2002-9, Eff. Oct. 1, 2002

**Compiler's Notes:** For transfer of powers and duties of office of state employer related to administration of state employee long-term disability plan and employee service program from office of state employer to Michigan civil service commission, see E.R.O. No. 2016-5, compiled at MCL 38.1175.

**EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 2002-12**

**38.1173 Transfer of powers and duties of department of management and budget, office of state employer, department of treasury, and department of information technology related to direction and management of**

**HRMN system to department of civil service by type II transfer.**

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article XI, Section 5, of the Constitution of the State of Michigan of 1963 empowers the Michigan Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service; and

WHEREAS, the administration of state employee benefit programs and the Quality Recognition System was transferred from the Office of the State Employer and the Department of Management and Budget to the Department of Civil Service by Executive Order 2002-13, effective October 1, 2002; and

WHEREAS, the Human Resource Management Network ("HRMN") System is under the joint executive direction of the directors of the Department of Civil Service, the Office of the State Employer, the Department of Management and Budget, the Office of the State Budget within the Department of Management and Budget, and the Department of Information Technology; and

WHEREAS, the HRMN System is managed by an informal HRMN Systems Coordination Committee consisting of representatives from the Department of Civil Service, the Department of Information Technology, the Office of the State Employer, the State Budget Office within the Department of Management and Budget, and the Department of Treasury; and

WHEREAS, in order to streamline business processes, improve service, focus development planning, enhance flexibility and responsiveness, and improve coordination among all user agencies, the executive direction and management of the HRMN System should be established within a single central agency.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. The "Civil Service Commission" means the Civil Service Commission created in Article XI, Section 5, of the Constitution of the State of Michigan of 1963.

B. The "Department of Civil Service" means the principal department of state government created by Section 200 of Act No. 380 of the Public Acts of 1965, being Section 16.300 of the Michigan Compiled Laws. Pursuant to Section 201 of Act No. 380 of the Public Acts of 1965, being Section 16.301 of the Michigan Compiled Laws, the head of the department is the Civil Service Commission.

C. The "State Personnel Director" means the person vested with the administration of the powers of the Civil Service Commission in Article XI, Section 5, of the Constitution of the State of Michigan of 1963.

D. The "Department of Management and Budget" means the principal department of state government created by Section 121 of Act No. 431 of the Public Acts of 1984, being Section 18.1121 of the Michigan Compiled Laws.

E. The "Office of the State Employer" means the autonomous office created within the Department of Management and Budget by Executive Order 1979-5, whose duties include, but are not limited to, those assigned by Executive Orders 1979-5, 1981-3, 1988-6, and 2002-18.

F. The "Department of Treasury" means the principal department of state government created by Section 75 of Act No. 380 of the Public Acts of 1965, being Section 16.175 of the Michigan Compiled Laws.

G. The "Department of Information Technology" means the principal department of state government created by Executive Order 2001-3, being Section 18.41 of the Michigan Compiled Laws.

H. The "HRMN System" means the Michigan statewide Human Resource Management Network System that delivers payroll, personnel, employee benefits, and other human resource functionality and data exchange, and includes, but is not limited to, the standards, guidelines, processes, procedures, practices, rules, regulations, hardware, and software for the operation of the HRMN System.

I. The "executive direction and management of the HRMN System" means the authority, power, duty, and responsibility for all of the following:

1. To establish, implement and enforce policy standards, guidelines, processes, procedures, practices, rules, and regulations for the operation of the HRMN System, consistent with applicable law.

2. To manage the HRMN System to achieve the business needs for payroll, personnel, employee benefits, and other human resource functions for the state of Michigan.

3. To direct and manage the program development and implementation of changes in the HRMN System.

4. To acquire technology development, services and software for the HRMN system through agency operating agreements between the Department of Civil Service and the Department of Information Technology.

5. To acquire and manage contracts for the HRMN System.

6. To standardize or centralize agency personnel transactions in the HRMN System.

II. TRANSFER

A. All of the authority, powers, duties, functions, and responsibilities of the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, and the Department of Information Technology related to the executive direction and management of the HRMN System, except as otherwise provided in Part III of this Order, are hereby transferred to the Department of Civil Service by Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. The Director of the Department of Civil Service may convene an advisory committee consisting of:

1. State Personnel Director, or his or her designee,
2. State Treasurer, or his or her designee,
3. State Budget Director, or his or her designee,
4. Director of the Department of Management and Budget, or his or her designee,
5. Director of the Office of the State Employer, or his or her designee, and
6. Director of the Department of Information Technology, or his or her designee.

III. MISCELLANEOUS

A. This Order does not transfer any other authority, power, duty, function, or responsibility of the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, or the Department of Information Technology that is now provided by law.

B. This order does not transfer any records, personnel, property, or funds to or from the Department of Civil Service, the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, or the Department of Information Technology.

C. For the purpose of implementing this Order or facilitating the delivery of human resource services, the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, or the Department of Information Technology may delegate by written instrument a lawful duty or power to the Department of Civil Service or the State Personnel Director. The department or person to whom such duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated. Any such delegation may be revoked by written instrument delivered to the department or person to whom the duty or power was originally delegated.

D. Upon execution of a written instrument pursuant to subsection C, the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, or the Department of Information Technology may transfer to the Department of Civil Service by written instrument any record, personnel, property, or funds now used, held, employed, available to, or to be made available to the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, or the Department of Information Technology for the operation, management or maintenance of the HRMN System.

E. For the purpose of implementing this Order or facilitating the delivery of human resource services, the Department of Management and Budget, the Office of the State Employer, the Department of Treasury, the Department of Information Technology, or any other executive branch agency may enter into a written agreement, including a service level agreement, with the Department of Civil Service regarding activities, staffing, operations, and infrastructure support to be provided for the support or operation of the HRMN System.

F. The State Personnel Director, in cooperation with the Director of the Office of the State Employer, the Director of the Department of Management and Budget, the State Treasurer, and the director of the Department of Information Technology, shall provide executive direction and supervision for the implementation of the transfer.

G. All rules, orders, contracts, agreements, or other obligations relating to the HRMN System lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

H. Nothing contained in this Order shall diminish or limit the authority of the Civil Service Commission to exercise any authority granted to it under Article XI, Section 5 of the Constitution of the State of Michigan of 1963.

I. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

**History:** 2002, E.R.O. No. 2002-12, Eff. Dec. 29, 2002

## EXECUTIVE REORGANIZATION ORDER

## E.R.O. No. 2015-4

**38.1174 Creation of state of Michigan retirement board within department of technology, management, and budget; transfer of powers and duties concerning retirement allowances, pensions, or other retirement benefits under Michigan military act to board; transfer of powers and duties of state employees' retirement system board and judges retirement board to board; abolishment of state employees' retirement system board and judges retirement board.**

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the state of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided in the Constitution; and

WHEREAS, there is a continued need to increase collaboration, optimize service delivery, and ensure efficient administration of the state of Michigan's several retirement systems, in accordance with applicable state and federal laws, rules, and regulations; and

WHEREAS, the state of Michigan intends that each of its retirement systems be administered as a qualified pension plan created in trust under section 401 of the Internal Revenue Code, 26 USC 401, that the respective trusts be exempt organizations under Section 501 of the Internal Revenue Code, 26 USC 501, and that they be administered in compliance with the provisions of Section 415 of the Internal Revenue Code, 26 USC 415, and other applicable regulations to fulfill this intent; and

WHEREAS, the State Employees' Retirement System and its board were created under the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 to 38.69, and its existence and powers were continued under Sections 251 and 254 of 1965 PA 380, as amended, MCL 16.351 and 16.354, to provide a system of pension and retirement benefits for eligible state employees; and

WHEREAS, the Judges Retirement System and its board were established by the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 to 38.2670, to provide retirement benefits to judges, and also the Governor, Lieutenant Governor, Secretary of State, Attorney General, and Legislative Auditor General; and

WHEREAS, Chapter 7 of the Michigan Military Act, 1967 PA 150, as amended, MCL 32.801 to 32.851, along with the Military Establishment Act, 1909 PA 84, as amended, MCL 32.35 to 32.49d, provides retirement benefits to eligible military personnel; and

WHEREAS, the Department of Technology, Management, and Budget, through its Office of Retirement Services, supervises the state of Michigan's retirement systems and provides budgeting, procurement, and management functions relative to the administration of retirement allowances, pensions, and other retirement benefits payable under the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 to 38.69, the Judges Retirement Act, 1992 PA 234, as amended MCL 38.2101 to 38.2670, the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 to 32.851, and the Military Establishment Act, 1909 PA 84, as amended, MCL 32.35 to 32.49d; and

WHEREAS, effective October 1, 2012, the Department of Military and Veterans Affairs transitioned all aspects of management of the Military Retirement Provisions, from initial eligibility and retirement applications to processing pension payments to each retiree and subsequent retirement beneficiaries to the Office of Retirement Services within the Department of Technology, Management, and Budget; and

WHEREAS, the functions, duties and responsibilities of the State Employees' Retirement System, the Judges Retirement System, and the Military Retirement Provisions, respectively, can be carried out more effectively by a new State of Michigan Retirement Board, under the supervision of the Department of Technology, Management, and Budget, through its Office of Retirement Services, which has the expertise to ensure that these functions are accomplished in a coordinated, cost-efficient, and effective manner in accordance with all applicable state and federal regulations;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Board" means the State of Michigan Retirement Board created in Section II of this Order.

B. "Department" means the principal department of state government created as the Department of Management and Budget by Section 121 of the Management and Budget Act, 1984 PA 431, MCL 18.1121 and renamed as the

"Department of Technology, Management, and Budget" pursuant to Executive Order 2009-9, MCL 18.441.

C. "Department of Military and Veterans Affairs" means the principal department of state government created as the Department of Military Affairs by Section 125 of 1965 PA 380, MCL 16.225, and renamed the "Department of Military and Veterans Affairs" pursuant to Executive Order 1997-7, MCL 32.91. ·

D. "Health insurance coverage" means the hospitalization and medical insurance, dental coverage, vision coverage, and any other health care insurance provided in Section 20d of the State Employees' Retirement Act, 1943 PA 240, MCL 38.20d.

E. "Military member" means a current or former officer or enlisted person, or an adjutant general or assistant adjutant general, who is eligible to be paid a retirement allowance, pension, or other retirement benefit provided under the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 to 32.851.

F. "Military Retirement Provisions" means the retirement allowance, pension, or other retirement benefits provided under the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 to 32.851.

G. "Retirement Acts" means, collectively, the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 to 38.69, the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 to 38.2670, and the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 to 32.851 or the Military Establishment Act, 1909 PA 84, as amended, MCL 32.35 to 32.49d, as applicable.

H. "Retirement systems" means the State Employees' Retirement System, created by Section 2 of State Employees' Retirement Act, 1943 PA 240, MCL 38.2, the Judges Retirement System, created by Section 201 of 1992 PA 234, MCL 38.2201, and the Military Retirement Provisions.

I. "Qualified pension plan" means a pension plan created in trust under Section 401 of the Internal Revenue Code, 26 USC 401.

J. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. CREATION OF THE STATE OF MICHIGAN RETIREMENT BOARD

A. The State of Michigan Retirement Board is created within the Department.

B. The Board shall exercise its powers, duties, and functions independently of the Department, in accordance with the Retirement Acts, the Public Employee Retirement System Investment Act, 1965 PA 314, as amended, MCL 38.1122 to 38.1141, and all other applicable state or federal laws, rules, and regulations. The budgeting, procurement, and related management functions of the Board shall be performed under the direction and supervision of the Department. The Board shall be assisted by personnel of the Department under the direction and supervision of the Director of the Department.

C. The powers, duties, and functions of the Board are vested in a board of trustees consisting of the following 9 members:

• The Attorney General who may designate one of his or her Assistant Attorneys General to serve as a voting member in the absence of the Attorney General.

• The State Treasurer who may designate a representative from within the Department to serve as a voting member in the absence of the State Treasurer.

• The Legislative Auditor General who may designate his or her Deputy to serve as a voting member in the absence of the Legislative Auditor General.

• The State Personnel Director who may designate an authorized representative to serve as a voting member in the absence of the State Personnel Director.

• One member or retirant of the State Employees' Retirement System, who shall be appointed by the Governor.

• One member or retirant of the Judges Retirement System, who shall be appointed by the Governor.

• One current or former officer or enlisted person in the Michigan Military Establishment who is a member or retirant under the Military Retirement Provisions, who shall be appointed by the Governor.

• One retirant member of the State Employees' Retirement System, who shall be appointed by the Governor.

• One member of the general public, who shall be appointed by the Governor.

D. The appointed members shall serve for a term of four years, except that of the members first appointed, the Governor shall appoint a state employee member for a term of one year, a member or retirant of the Judges Retirement System for a term of two years, and the member or retirant under the Military Retirement Provisions for a term of three years.

E. Any appointed Board member who fails to attend the scheduled meetings of the Board for two consecutive meetings without valid excuse, as determined by the Board chairperson, shall be considered as having resigned from the Board and the Board shall declare his or her office vacated by way of a resolution, and shall notify the Governor of the vacancy. During their designated term of office, appointed members of the Board serve at the pleasure of the Governor and may be removed by the Governor as provided in Article V, Section 10 of the State Constitution of 1963. If for any reason a vacancy occurs in the office of an appointed Board member, the Governor shall appoint a replacement who shall serve for the remainder of the unexpired term. Board members shall serve for the duration of their appointed term and shall continue to hold office after the expiration of their term until a successor is appointed.

F. A majority of the members serving on the Board shall constitute a quorum for the transaction of business at a

meeting of the Board.

G. The Board shall conduct its business at public meetings in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. However, members of the Board may attend and participate in a meeting of the commission by the use of telecommunication or other electronic equipment if their attendance and participation by the use of telecommunication or other electronic equipment is authorized by the bylaws of the Board and that meeting is otherwise conducted in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275.

H. A writing prepared, owned, used, in the possession of, or retained by the Board in the performance of an official function is subject to the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 to 15.246.

I. The members of the Board shall serve without compensation, but may receive reasonable reimbursement for all actual necessary travel and expenses incurred in the performance of their official duties.

J. The Board shall annually elect from its membership a chairperson and a vice-chairperson. A chair or vice-chairperson may be reelected to consecutive terms for those positions without limitation, subject to the expiration of their term of service on the Board. The Department, in consultation with the Board, shall designate an executive secretary, and shall also designate any actuarial, medical, clerical, technical, and administrative personnel as may be necessary for the proper operation of the Retirement Systems.

K. The Board shall act in the best interests of the active and retirant members of the Retirement Systems and shall act in accordance with all applicable laws, rules, and regulations, including all provisions of the Retirement Acts except as modified by this Order.

III. TRANSFER OF FUNCTIONS

A. The administrative statutory powers, duties, functions, and responsibilities concerning retirement allowances, pensions, or other retirement benefits under the Michigan Military Act are transferred to the Board created in Section II of this Order.

B. The authority, powers, duties, functions, responsibilities, and rule-making authority of the State Employees' Retirement System Board are transferred to the Board created in Section II of this Order. The State Employees' Retirement System Board created by Section 2 of the State Employees' Retirement Act, 1943 PA 240, MCL 38.2, is abolished.

C. The authority, powers, duties, functions, responsibilities, and rule-making authority of the Judges Retirement Board are transferred to the Board created in Section II of this Order. The Judges Retirement Board, created by Section 202 of the Judges Retirement Act of 1992, 1992 PA 234, MCL 38.2202, is abolished.

IV. IMPLEMENTATION

A. The Director of the Department, in consultation with the State Treasurer, shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The Department of Military and Veterans Affairs shall provide the Board and the Department with the records, data, and other information as requested by the Office of Retirement Services to ensure that these functions are accomplished in a coordinated, cost-efficient and effective manner.

C. The Board shall administer the Military Retirement Provisions as part of a qualified pension plan created in trust under Section 401 of the Internal Revenue Code, 26 USC 401, in accordance with State Employees' Retirement Act and all plan documents relating to the governance of the same.

D. The Department may establish any fund it deems necessary for the funding and payment of benefits provided to military members under the Michigan Military Act, in accordance with state and federal regulations applicable to qualified governmental plans, including but not limited to the following:

1. A military accumulation fund in which may be accumulated any reserves derived from the money provided for the payment of retirement allowances, pensions, and other retirement benefits payable to military members under the Michigan Military Act and the Military Establishment Act; and

2. A military pension reserve fund from which may be paid all retirement allowances, pensions, and other retirement benefits provided to military members under the Michigan Military Act and the Military Establishment Act.

E. Beginning with the state fiscal year 2016-2017, the Department shall determine a separate contribution rate to be contributed by the state for retirement allowances, pensions, and other retirement benefits payable to military members under the Michigan Military Act and the Military Establishment Act. The amount of the unfunded accrued liability on which the separate contribution rate is determined shall be that amount which the state is legally responsible for and is to be calculated by an actuarial analysis.

F. Beginning with the state fiscal year 2016-2017, the Department shall determine a separate contribution rate for health insurance coverage for eligible military members using an individual projected benefit entry age normal cost method of valuation. The unfunded actuarial accrued liability shall be equal to the actuarial present value of benefits reduced by the actuarial present value of future normal cost contributions and the actuarial value of assets on the valuation date. Except as otherwise provided in the State Employees' Retirement Act, the unfunded actuarial accrued liability shall be amortized in accordance with generally accepted governmental accounting standards over a period equal to or less than 40 years, with a payment schedule determined by the Department.

G. All funding that is currently being held in a "work project" account, or any similar account, for the payment of

retirement allowances, pensions, or other retirement benefits provided to military members under the Michigan Military Act, shall be transferred to an appropriate pension trust account, in accordance with applicable state and federal regulations.

H. The State Budget Director shall determine and authorize the most efficient manner possible for the handling of financial transactions and records in the state's financial management system for the remainder of the current state fiscal year for transfers made under this Order.

V. MISCELLANEOUS

A. All rules, orders, contracts, declaratory rulings, agreements, and other actions relating to the assigned functions lawfully adopted prior to the effective date of the transfers provided herein shall continue to be effective until revised, amended, repealed, or rescinded.

B. Nothing in this Order shall be construed to diminish or impair the accrued financial benefits of a member eligible to receive a pension benefit pursuant to the Retirement Acts.

C. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion.

E. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, this Order shall be effective January 1, 2016.

**History:** 2015, E.R.O. No. 2015-4, Eff. Jan. 1, 2016
**Compiler's Notes:** Executive Reorganization Order No. 2015-4 was promulgated October 27, 2015 as Executive Order No. 2015-13, Eff. Jan. 1, 2016.

## EXECUTIVE REORGANIZATION ORDER

## E.R.O. No. 2016-5

### 38.1175 Transfer of powers and duties of office of state employer related to administration of state employee service program from office of state employer to Michigan civil service commission by type II transfer.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the state of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration; and

WHEREAS, the Office of State Employer currently administers the state’s longterm disability plan and employee service program; and

WHEREAS, the Michigan Civil Service Commission currently administers all other benefit programs for employees in the state classified service; and

WHEREAS, there is a continued need to reorganize functions among state agencies to ensure the efficient administration of state government; and

WHEREAS, the long-term disability plan and employee service program may be more effectively and efficiently administered and coordinated within the Michigan Civil Service Commission;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Michigan Civil Service Commission" means the commission created under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Office of the State Employer" means the autonomous office created within the Department of Management and Budget under Executive Order 1979-5, whose duties include, but are not limited to, those assigned by Executive Orders 1979-5, 1981-3, 1988-6, 2002-18, 2004-31, 2007-30, 2008-22, and 2009-55.

C. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. TRANSFER

All the authority, powers, duties, functions, and responsibilities of the Office of the State Employer related to administration of the state employee long-term disability plan and the employee service program are hereby transferred from the Office of the State Employer to the Michigan Civil Service Commission by Type II transfer, as defined by Section 3 of the Executive Organization Act, 1965 PA 380, MCL 16.103. The Office of the State Employer shall continue to exercise all other authority, powers, duties, functions, and responsibilities of the Office of the State Employer not transferred by this Order.

III. IMPLEMENTATION

A. The State Personnel Director, in cooperation with the Director of the Office of the State Employer, shall provide executive direction and supervision for implementing the transfer.

B. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system.

C. All records, personnel, property, and funds of the long-term disability plan and employee service program used, held, employed, available to, or to be made available to the Office of the State Employer for the powers, duties, functions, and responsibilities transferred by this Order are hereby transferred to the Michigan Civil Service Commission.

D. All rules, orders, contracts, agreements, or other obligations relating to the long-term disability plan and employee service program lawfully adopted before the effective date of this Order shall continue to be effective until revised, amended, or repealed.

E. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taken effect of this Order.

F. Nothing contained in this Order shall diminish or limit the authority of the Michigan Civil Service Commission to exercise any authority granted to it under Article XI, Section 5 of the Constitution of the state of Michigan of 1963.

In fulfillment of the requirements of Section 2 of Article V of the Michigan Constitution of 1963, this Order shall be effective 60 calendar days after the beginning of the next regular legislative session after the filing of this Order.

**History:** 2016, E.R.O. No. 2016-5, Eff. Jan. 3, 2017
**Compiler's Notes:** Executive Reorganization Order No. 2016-5 was promulgated November 3, 2016, as Executive Order No. 2016-22, Eff. Jan. 3, 2017.

**EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 2018-5**

## 38.1176 Creation of state of Michigan investment board within department of treasury; transfer of powers and duties of state treasurer created under public employee retirement system investment act or authorizing statutes to the board; transfer of powers and duties of investment advisory committee created under MCL 16.191 to the board; abolishment of investment advisory committee.

WHEREAS, Article V, Section 1 of the Michigan Constitution of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2 of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8 of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, there is a continued need to reorganize functions among state departments to ensure efficient administration; and

WHEREAS, Section 91 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.191, provides the State Treasurer with investment control over assets of certain public retirement systems in this State and established an investment advisory committee to review and make recommendations to the State Treasurer regarding investments, goals, and objectives of those retirement funds; and

WHEREAS, the State Treasurer is the sole fiduciary of, and has investment authority for, the Michigan Public School Employees' Retirement System, the Michigan State Police Retirement System and the Michigan Judges Retirement System pursuant to the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq., the State Police Retirement Act of 1986, 1986 PA 182, as amended, MCL 38.1601 et seq., and the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq., respectively, and the State Treasurer is the sole custodian of the State Employees' Retirement System, pursuant to the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq.; and

WHEREAS, the State Treasurer is authorized to invest the assets of those retirement systems in accordance with provisions of the Public Employee Retirement System Investment Act, 1965 PA 314, as amended, MCL 38.1132 et seq.; and

WHEREAS, the Public Employee Retirement Health Care Funding Act, 2010 PA 77, as amended, MCL 38.2731 et seq., provides that the State Treasurer is the investment fiduciary for the irrevocable trusts that prefund retiree health care benefits for the Tier 1 Plans; and

WHEREAS, the State Treasurer is responsible for the administration and investment of this State's deferred compensation plan under 1976 PA 306, as amended MCL 38.1151; and

WHEREAS, the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq.; the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq.; the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq.; and the Michigan Legislative Retirement System Act, 1957 PA 261, as amended, MCL 38.1001 et seq. provide that the State Treasurer is responsible for administering, investing assets, and determining the provisions and procedures of Tier 2 Plans for the Michigan Public School Employees' Retirement System, Michigan Judges Retirement System, State Employees' Retirement System, and the Michigan Legislative Retirement System, respectively; and

WHEREAS, Executive Reorganization Order No. 1996-5, MCL 38.1171, transferred the responsibility for this State's deferred compensation plans to the State Treasurer and Executive Reorganization Order No. 1999-5, MCL 38.2721, transferred certain duties to the Department of Management and Budget while providing the State Treasurer with the responsibility for approving the investment offerings provided in the Tier 2 Plans and this State's deferred compensation plans; and

WHEREAS, it is critical to the best interests of the members of the Retirement System and participating plans that their fiduciaries be held to the highest ethical standards, free of conflicts of interest and political influence; and

WHEREAS, the Investment Advisory Committee, established in 1965, has retained the same structure and governance since its establishment despite the growing importance that prudent investment plays in providing appropriate funding for retirees and the increasing complexity of investment and financial markets; and

WHEREAS, the creation of the State of Michigan Investment Board will allow the Retirement System to modernize its governance structure to further align with accepted public pension and retirement plan administration best practices to ensure that the assets of the Retirement System are overseen by a fiduciary that is held to the utmost ethical standards, is free of conflicts of interest, operates with discipline, is consistent in its investment strategy and administration, and is able to fulfill its duties to protect the interests of the members of the Retirement System; and

WHEREAS, creating the State of Michigan Investment Board will strengthen fiduciary management and modernize oversight of the Retirement System, thus bolstering accountability and transparency of board members, the fiduciary, and investment staff to the Retirement System.

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Act 314" means the Public Employee Retirement System Investment Act, 1965 PA 314, as amended, MCL 38.1132 et seq.

B. "Authorizing Statutes" means any public act, resolution, order or agreement which conveys upon the State Treasurer the authority or duty to invest the assets or monies of the Retirement System.

C. "Board" means the State of Michigan Investment Board created in Section II of this Order.

D. "Bureau of Investments" means the bureau within the Department charged with investing the assets of the Retirement System in accordance with Act 314 and the Authorizing Statutes.

E. "Chief Investment Officer" means the individual appointed by the State Treasurer, in consultation with the Board, and shall be part of the classified civil service and manage the day-to-day functions of the Bureau of Investments, including executing investments and delegating authority to execute the proper and efficient

investment of funds of this State pursuant to state statutes.

F. "Defined Contribution Plans" or "DC Plans" means the Tier 2 Plans, as defined in this Order, and 457 deferred compensation retirement plans established pursuant to 1976 PA 306, as amended, MCL 38.1151.

G. "Department" means the principal department of state government created as the Department of Treasury by Section 75 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.175.

H. "Investment Advisory Committee" means the investment advisory committee established pursuant to Section 91 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.191, as abolished by this Order.

I. "Military Retirement System" means the retirement allowance, pension, or other retirement benefits provided under the Michigan Military Act, 1967 PA 150, as amended, MCL 32.501 et seq., and further governed by Executive Reorganization Order No. 2015-4, MCL 38.1174.

J. "OPEB" means other post-employment benefits, which in this context are the irrevocable trusts that prefund retiree health care benefits for the Tier 1 Plans and in which the State Treasurer is appointed as investment fiduciary pursuant to the Public Employee Retirement Health Care Funding Act, 2010 PA 77, as amended, MCL 38.2731 et seq.

K. "Retirement System" means the Tier 1 Plans, Tier 2 Plans, the Military Retirement System, DC Plans, and OPEB, for all of which the State Treasurer is either the fiduciary or has investment authority.

L. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

M. "State Treasurer" means the individual appointed by the Governor as director of the Department.

N. "Tier 1 Plans" means the defined benefit retirement plans of the Michigan Public School Employees' Retirement System created by the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 et seq., the State Employees' Retirement System created by the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq., the Michigan State Police Retirement System, created by the State Police Retirement Act of 1986, 1986 PA 182, as amended, MCL 38.1601 et seq., and the Michigan Judges Retirement System created by the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq.

O. "Tier 2 Plans" means the Tier 2 retirement plans established pursuant to section 401(k) or section 457 of the Internal Revenue Code, and provided for in applicable portions of the Michigan Public School Employees' Retirement System under the Public School Employees Retirement Act of 1979,1980 PA 300, as amended, MCL 38.1301 et seq., the Michigan Judges Retirement System under the Judges Retirement Act of 1992, 1992 PA 234, as amended, MCL 38.2101 et seq., the State Employees' Retirement System under the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.1 et seq., the Michigan Legislative Retirement System under the Michigan Legislative Retirement System Act, 1957 PA 261, as amended, MCL 38.1001 et seq., and on behalf of other eligible state or local entities or authorities as provided for by current and subsequent state law, and for which the State Treasurer has the responsibility of investing assets of and determining the provisions and procedures.

II. CREATION OF THE STATE OF MICHIGAN INVESTMENT BOARD

A. The State of Michigan Investment Board is created within the Department. The Board shall be the investment fiduciary with respect to the investment and function of the Retirement System for which the State Treasurer currently has fiduciary responsibilities or investment authority. All statutory powers, duties, functions, and responsibilities of the State Treasurer created under Act 314 or the Authorizing Statutes are transferred to the Board. All statutory powers, duties, functions, and responsibilities of the Investment Advisory Committee created under Section 91 of 1965 PA 380, MCL 16.191, are transferred to the Board. The Investment Advisory Committee is abolished.

B. The Board consists of the following five individuals:

1. The State Treasurer, who shall serve without designee and shall serve as the Board's chairperson.

2. The State Budget Director who shall serve without designee.

3. Three individuals appointed by the Governor who shall have knowledge or experience in securities investment, pension administration, or pension law, past or current fiduciary oversight experience of investment pools similar to the Retirement System, or extensive professional financial knowledge and experience. An individual appointed to serve on the Board, or such individual's spouse or other immediate family-member, shall not be employed by or otherwise receive compensation directly or indirectly from an entity engaged by the Retirement System or the Bureau of Investments. The appointed members of the Board are subject to all restrictions and limitations with respect to eligibility and appointment described in this Order.

C. The appointed members shall serve a term of four years, except initially, one member shall be appointed to a two-year term, one member shall be appointed to a three-year term, and one member shall be appointed to a four-year term. A member of the Board may be appointed to no more than two consecutive four-year terms, in addition to one partial term. A member may serve until his or her successor is appointed. A member shall not serve more than 10 years.

D. A vacancy in the membership of the Board shall be filled by appointment by the Governor in accordance with this Order for the remainder of the unexpired term. A vacancy automatically occurs by death, resignation, failure of the member to attend three consecutive meetings unless excused by majority vote of the other Board members, or

in the event of either a conflict of interest uncured within 30 days or a member's failure to duly execute the ethics policy adopted by the Board.

E. An individual is not eligible for appointment to the Board, and any member currently serving is removed automatically, if any of the following apply to that individual:

1. The individual has been indicted or charged with, convicted of, pleaded guilty or nolo contendere to, or forfeited bail concerning, a felony, or a misdemeanor involving fraud, theft, or dishonesty under the laws of any jurisdiction in the United States;

2. The individual has had a judgment entered against him or her by a court of competent jurisdiction in a civil matter involving a breach of fiduciary duties;

3. The individual has been the subject of an adverse action by the Securities and Exchange Commission which resulted in any settlement, sanction, payment of a fine, injunction, or other negative finding, whether individually, or as a partner, principal member, managing director, or other position of leadership of any entity subject to such penalty or finding;

4. The individual, or their spouse or an immediate family-member, is or becomes employed by a service provider to the Retirement System or Bureau of Investments; or

5. The individual, or their spouse or an immediate family-member: is an endorser or obligor, or provider of surety, for any money loaned to or borrowed from the Retirement System; or, is borrowing any of the money or other assets of the Retirement System.

F. The Board shall conduct its business at public meetings in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq.

1. Members of the Board may attend and participate in a meeting of the Board using telecommunication or other electronic equipment provided all members of the Board, and the public attending the meeting, are able to hear one another and can communicate effectively and that the members of the Board and the public can actively participate in the open meeting.

2. If the State Treasurer, as chairperson, attends a meeting of the Board through electronic means or is unable to attend a meeting, the State Treasurer shall appoint, from the members physically present at such meeting, a member of the Board to serve as chairperson of that meeting only. This appointment as chairperson shall be limited in scope to allow for the administration of the meeting, surviving only for that particular meeting and terminate immediately upon adjournment.

G. The members of the Board shall serve without compensation but may receive reasonable reimbursement for all actual necessary travel and expenses incurred to attend official Board meetings.

H. The members of the Board shall meet quarterly to:

1. Conduct the official business of the Board, pursuant to its fiduciary duties, Act 314, and this Order;

2. Review investment reports and monitor investment performance;

3. Approve an investment policy statement for the Retirement System, to be signed by the State Treasurer as chairperson, in which the Board delegates appropriate authorities and powers as it deems necessary;

4. As required by this Order, approve the asset allocation targets of the Tier 1 Plans and OPEB approximately every two (2) years; and

5. Review the investment performance of the DC Plans, which information shall be incorporated into the quarterly information.

I. The Board may meet at other times at the request of the State Treasurer as the chairperson of the Board.

J. Members of the Board shall not individually meet with any manager, broker, consultant, investment manager, or other provider of investment related services that has, or reasonably may be in a position to have, business with the Board for the purpose of discussing matters related to official Board business without approval of a majority of members of the Board. However, the State Treasurer, as chairperson, shall be permitted to meet with service providers or potential service providers.

K. Upon approval by the Board, the State Treasurer, as chairperson, may directly or indirectly invest the Retirement System assets.

L. The Board shall approve and adopt a set of ethics rules and code of conduct applicable to its members, with periodic updates to be approved as deemed necessary by the Board, and to be signed by the State Treasurer as chairperson of the Board. The Bureau of Investments' staff shall cause the current approved and adopted ethics rules and code of conduct to be posted to the Bureau of Investments' public website.

M. The Board shall provide each of its members with copies of the Board's ethics rules and code of conduct, current investment policy statement(s), policies and procedures applicable to Board meetings, statutes, administrative rules and expectations governing public meetings in this State, and any other matters that are central to membership on the Board. Each Board member shall, within 14 days of receiving this information, certify and sign an attestation of their receipt and acknowledgement of information presented. The Bureau of Investments' staff shall publish or cause to be published each certification to the Bureau of Investments' public website.

N. When a vacancy occurs in the position of Chief Investment Officer, the State Treasurer, in consultation with the Board, shall appoint a Chief Investment Officer to manage and direct the day-to-day investment and administrative management functions of the Bureau of Investments. The Chief Investment Officer shall be part of

the classified civil service.

III. ADDITIONAL RESPONSIBILITIES OF BOARD

A. The Board shall act as the investment fiduciary and custodian of the Retirement System's assets.

B. The Board shall cause the Bureau of Investments to invest, reinvest, assign, reassign, sell, transfer, and manage the investment funds and portfolios of the Retirement System.

C. The Board may solicit proxies in connection with contests for corporate control of corporations in which the Retirement System has made an investment; use nominees to facilitate transfers; and take any other action necessary and prudent in the investment of the Retirement System's assets pursuant to this Order, Act 314, and as may otherwise be authorized under the laws of this State.

D. The Board shall approve any changes to the investment manager lineup of the DC plans based on the recommendation of the Bureau of Investments, working in consultation with the Office of Retirement Services. The Office of Retirement Services shall have the exclusive responsibility to execute or sign any agreement with the DC Plan's investment managers.

E. As it relates to this Order, any authority, duties, and obligations under Act 314 shall be exercised only by the Board.

F. The Board has the exclusive authority, right, duty, or obligation to perform the following:

1. Act in accordance with the fiduciary duties prescribed to the Board as custodian and investment fiduciary of the Retirement System's assets;

2. Cause the investment and reinvestment of the Retirement System's assets, through the Bureau of Investments, in accordance with the provisions and standards of Act 314 and the Authorizing Statutes; and

3. Sue and be sued in its own name and be responsible for instituting or defending against legal proceedings arising out of the investment of the Retirement System's assets.

G. In addition to any other rights, responsibilities, powers, and duties granted by law, the Board shall have the exclusive right to cause the Bureau of Investments to perform the following:

1. Collect the principal and interest or other income and dividends of investments when due and payable, and pay the principal and interest or other income and dividends, when so collected, into the appropriate fund as directed by the applicable Authorizing Statutes;

2. Invest and reinvest the Retirement System's assets in any manner provided for in Act 314 and the Authorizing Statutes;

3. Account for all principal, interest, other income and dividends, and expenses of and related to investment of the Retirement System's assets and other funds that the Board invests;

4. Expend appropriated funds from investment income to support the investment of and accounting for the Retirement System's assets, and for all other support purposes necessary to the activities of the Board; including the payment of professional development and licensing expenses or professional dues for the employees of the Bureau of Investments;

5. Exercise any shareholder or other voting rights arising from an investment;

6. Exercise any other right or action or fulfill any obligations necessary to accomplish the Board's mission or comply with the laws of this State and this Order;

7. Negotiate with, select, and retain: investment managers and service providers; portfolio systems services; consultants; investment information resources; and any other sources of expertise, research, or services necessary to conduct investment activities, protect the assets of the Retirement System, or to otherwise support the management of assets of the Retirement System; and

8. Perform necessary due diligence to source new investment opportunities and monitor existing investments, which may include on-site meetings with current or potential investment managers and investment funds, on-site inspection of physical assets, or on-site investor meetings necessary for the proper management of the assets of the Retirement System.

IV. ADDITIONAL FIDUCIARY RESPONSIBILITIES OF THE BOARD

A. The Board is authorized to invest and to cause the Bureau of Investments to invest the Retirement System's assets, in accordance with the fiduciary duties pursuant to Act 314, and in accordance with state and federal law, rules, and regulations and any applicable resolution, contract, or memorandum of understanding. The authority to invest the assets of the Retirement System includes the exclusive power to execute all contracts, agreements, or other such legal documents necessary to effectuate the investment of funds or implementation of any portfolio management system, and the authority to delegate all applicable powers and duties to the Bureau of Investments, as the Board deems necessary, to prudently manage the assets of the Retirement System.

B. The Board is the custodian of the assets of the Military Retirement System and is responsible for investing its assets in accordance with state and federal law.

V. ADDITIONAL ADMINISTRATION ISSUES RELATED OF THE BOARD AND BUREAU OF INVESTMENTS

A. In addition to the limitations contained in Section 13e of Act 314, as amended, MCL 38.1133e, the Board shall be prohibited from paying any fees, including contingency fee arrangements, or any other remuneration,

directly or indirectly and whether from the Retirement System's assets or otherwise, to service providers if such service provider or a covered associate of a service provider made a contribution in the immediately preceding 36-calendar-month period to an incumbent or candidate of an elected office within the executive branch or a principal department of this State. The Board may implement this limitation through policies, procedures, or otherwise as it deems appropriate. The terms "service provider" and "covered associate of the service provider" shall have the same meanings afforded to each in MCL 38.1133e.

B. The Tier 1 Plans, the Military Retirement System, and OPEB shall be referred to as the "State of Michigan Retirement System" for purposes of any and all investments, agreements, contracts, certificates, or such other documents entered into in conjunction with any transaction or business, or in connection with the exercise of the Board's powers and authority pursuant to the Authorizing Statutes or this Order. Any and all investments, agreements, contracts, certificates, or such other documents executed under the name "State Treasurer of the State of Michigan, Custodian of the Michigan Public School Employees' Retirement System, State Employees' Retirement System, Michigan State Police Retirement System, and Michigan Judges Retirement System" or other similar name associated with the federal tax identification number 38-2836023 are, or shall remain, duly authorized and in force under such name. Nothing in this section shall be construed to transfer any assets of the Tier 1 Plans, the Military Retirement System, or OPEB to any successor trust or trustee.

C. Bureau of Investment staff shall present information to the Board at its regular quarterly meeting, including updated asset allocation targets and ranges for the Tier 1 Plans and OPEB approximately every two years, contingent upon market, regulatory, legal or other applicable circumstances related to the Retirement System's investable assets. Bureau of Investment staff shall also present information related to the quarterly investment performance of the DC Plans to the Board at its regular quarterly meetings.

VI. MISCELLANEOUS

A. All rules, orders, contracts, plans, investments, and agreements relating to the functions transferred by this Order lawfully adopted or executed before the effective date of this Order shall continue to be effective unless and until revised, amended, or rescinded.

B. Any suit, action, or other proceeding lawfully commenced by or against any department identified in Section I of this Order before the effective date of this Order shall not abate by reason of the taking effect of this Order. Any lawfully commenced suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements of Section 2 of Article V of the Michigan Constitution of 1963, this Order shall be effective 60 days after the filing of this Order.

**History:** 2018, E.R.O. No. 2018-5, Eff. Nov. 27, 2018
**Compiler's Notes:** Executive Reorganization Order No. 2018-5 was promulgated September 27, 2018, as Executive Order No. 2018-10, Eff. Nov. 27, 2018.

## COMPENSATION FOR INJURED EMPLOYEES OF DEPARTMENT OF STATE

### Act 452 of 1978

AN ACT to provide compensation to department of state employees injured while performing certain duties connected with their employment.

**History:** 1978, Act 452, Imd. Eff. Oct. 16, 1978

*The People of the State of Michigan enact:*

### 38.1181 Assault on department of state employee rendering direct services to public; compensation.

Sec. 1.

(1) A person employed as a classified employee of the department of state who is assaulted while performing

employment duties, rendering direct services to the public, shall receive full wages from the department of state until worker's compensation benefits begin. After the benefits begin, the person shall receive, in addition to the worker's compensation benefits, a supplement from the department which together with the worker's compensation benefits shall equal but not exceed the normal weekly wages of the employee at the time of the injury, up to 40 hours per week. This supplement shall only apply while the person is on the department's payroll and is receiving worker's compensation benefits qualifying for supplemental duty disability pay under the rules and procedures of the civil service commission.

(2) An employee who is receiving worker's compensation due to an injury covered by this section on the effective date of this act shall be entitled to benefits from that date forward. Fringe benefits normally received by an employee shall remain in effect during the time the employee receives the supplement provided by this section.

**History:** 1978, Act 452, Imd. Eff. Oct. 16, 1978

### 38.1182 Definition of employee rendering direct services to public.

Sec. 2.

For the purposes of this act, an employee rendering direct services to the public shall be defined as a classified employee who is servicing the public in a branch office or driver improvement center, an employee who is conducting road tests associated with a branch office or driver improvement center, or an employee who is classified as an investigator or who is in training to become an investigator.

**History:** 1978, Act 452, Imd. Eff. Oct. 16, 1978

## SALARIES AND BENEFITS OF NONCLASSIFIED STATE EMPLOYEES

## Act 429 of 1978

AN ACT to establish rules governing salaries and other benefits of certain state employees not in the classified state civil service.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

*The People of the State of Michigan enact:*

### 38.1201 Applicability of act.

Sec. 1.

This act applies to employees of the state who are not classified state civil service employees. This act does not apply to employees in the legislative and judicial branches of government, those elected by popular election, employees of state institutions of higher education, persons in the armed forces of the state, employees who serve without salary, or to members of boards or commissions who are paid at a per diem rate.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1202 Salary considered annual salary; salary payments.

Sec. 2.

A salary prescribed by statute or in an appropriation act, unless otherwise qualified, is considered to be an annual salary. Nonclassified employees shall be paid in increments at a rate determined by dividing the annual salary by the number of state payrolls in a fiscal year. Regular salary payments shall be made only for that time during which the employee holds the position.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1203 Sick, annual, bonus, and personal leave time.

Sec. 3.

The crediting, accumulation, use, and recording of sick, annual, bonus, and personal leave time for nonclassified employees shall be the same as that established for employees in the state classified service. These conditions may be waived by a nonclassified employee by written agreement with the appointing authority, in which case the nonclassified employee shall not be eligible for the provisions in sections 4 and 5 or other monetary benefits.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1204 Terminal leave benefits; approved leave of absence.

Sec. 4.

When services of a nonclassified employee are terminated for any reason, the employee or the employee's heirs shall be paid terminal leave benefits the same as classified state civil service employees, except that those nonclassified employees who are on an approved leave of absence from a position in the classified service and who return to that position shall utilize the combined balances of sick leave, both in the classified and nonclassified service, for the purpose of determining the percentage of sick leave payment.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1205 Annual longevity payments.

Sec. 5.

A nonclassified employee shall be eligible for annual longevity payments on the same basis as classified employees, except that eligibility for longevity payment shall be determined by combining the years of service in both the classified and nonclassified service and the amount of payment determined by the equivalent longevity pay rates established by the civil service commission for nonclassified employees.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1206 Voluntary payroll deductions; group benefits.

Sec. 6.

A nonclassified employee is entitled to the same types of voluntary payroll deductions as is an employee in the state classified service, and is entitled to join employee groups for benefit purposes, subject to approval by sponsoring authorities or applicable law.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1207 Terminal payment for accrued leave balances.

Sec. 7.

A terminal payment for accrued leave balances, as prescribed in section 4, is limited to the unexpended appropriation balance for the position, and as supplemented by the legislature.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1208 Procedures for administering act.

Sec. 8.

The department of management and budget may establish procedures for administering this act.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

### 38.1209 Effective date.

Sec. 9.

This act shall take effect October 1, 1978.

**History:** 1978, Act 429, Imd. Eff. Oct. 5, 1978

## PUBLIC EMPLOYEE HEALTH CARE FUND INVESTMENT ACT

### Act 149 of 1999

AN ACT to provide for the creation of public employee health care funds; to provide for the administration of the funds; to authorize the investment of the assets of the funds or trusts; and to prescribe the powers and duties of investment fiduciaries and certain public officers and employees.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

*The People of the State of Michigan enact:*

## 38.1211 Short title.

Sec. 1.

This act shall be known and may be cited as the "public employee health care fund investment act".

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

## 38.1212 Definitions.

Sec. 2.

As used in this act:

(a) "Bankruptcy trust" means a trust created by a court order, including a plan for adjustment.

(b) "Bankruptcy trust beneficiary" means an individual who is eligible to receive health care benefits under a bankruptcy trust.

(c) "Board of trustees" or "board" means the governing board of a bankruptcy trust.

(d) "Fund" means a public employee health care fund created under this act or a court order, including a plan for adjustment, and used for the accumulation and investment of funds for the purpose of funding health care for retired employees of the public corporation.

(e) "Investment fiduciary" means a person who does any of the following:

(i) Exercises any discretionary authority or control in the investment of the fund's or trust's assets.

(ii) Renders investment advice to a fund or trust for a fee or other direct or indirect compensation.

(f) "Plan for adjustment" means a plan for the adjustment of debts entered and approved by a federal bankruptcy court for a public corporation.

(g) "Public corporation" means a county, city, village, township, authority, district, board, or commission in this state.

(h) "Qualified person" means an individual who is eligible to receive health care benefits and who is designated as a qualified person by the public corporation.

(i) "Trust" means a trust created under the authority of a state or federal law for the purpose of funding retiree health care benefits.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999 ;-- Am. 2016, Act 557, Imd. Eff. Jan. 10, 2017
**Compiler's Notes:** Enacting section 1 of Act 557 of 2016 provides:"Enacting section 1. It is the intent of the legislature that a bankruptcy trust as defined in the amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, must provide for the removal and reappointment of members of the board of trustees, and the legislature finds and declares that providing that removal and appointment is necessary to the efficient operation and administration of the bankruptcy trust for the benefit of bankruptcy trust beneficiaries."Enacting section 2 of Act 557 of 2016 provides:"Enacting section 2. If there is a conflict between the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, and a plan for adjustment as defined in the amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, the plan for adjustment must control."

## 38.1213 Establishment of public employee health care fund; resolution.

Sec. 3.

The legislative body of a public corporation may adopt a resolution establishing a public employee health care fund for the purpose of accumulating funds to provide for the funding of health care benefits to retirants and beneficiaries of retirants of the public corporation. Money for the payment of health care benefits for retired employees of the public corporation may, at the discretion of the public corporation, be provided from this fund or any other fund or trust. The resolution shall include all of the following:

(a) The designation of a person or persons who shall act as the fund's investment fiduciary.

(b) A restriction of withdrawals from the fund solely for the payment of health care benefits on behalf of qualified persons and the payment of the expenses of administration of the fund.

(c) The designation of who is a qualified person for purposes of payment of health care benefits from the fund.

(d) A determination of whether the fund will be established on an actuarial basis.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

### 38.1214 Investment fiduciary; duties.

Sec. 4.

An investment fiduciary shall invest the assets of the fund in accordance with an investment policy adopted by the governing body of a public corporation and that complies with section 13 of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133. However, the investment fiduciary shall discharge his or her duties solely in the interest of the public corporation. The public corporation may invest the fund's assets in the investment instruments and subject to the investment limitations governing the investment of assets of public employee retirement systems under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

### 38.1214a Trustee of bankruptcy trust; service; removal; vacancy on board; meetings; business conducted at public meeting; publication of summary annual report on public website; "appointing authority" defined.

Sec. 4a.

(1) A trustee of a bankruptcy trust serves at the pleasure of the appointing authority. The appointing authority may, after providing 30 days' notice to a trustee, remove the trustee without cause. The appointing authority may immediately remove a trustee for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(2) The board of trustees, by a vote of 2/3 of the voting members serving, may, after providing 30 days' notice to a trustee, request that the appointing authority remove the trustee if the board determines that allowing the trustee to serve could cause loss of confidence in the administration of the bankruptcy trust and that removing the trustee is in the best interest of the bankruptcy trust beneficiaries. The board, by a majority vote of the voting members serving, may recommend that the appointing authority immediately remove a trustee for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(3) If there is a vacancy on the board of trustees, the vacancy must be filled in a manner provided by the court or the plan for adjustment.

(4) The board of trustees shall meet at least quarterly.

(5) The business that the board of trustees may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) A writing prepared, owned, used, in the possession of, or retained by the board of trustees in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) The board of trustees shall prepare and publish on a public website a summary annual report that includes the bankruptcy trust's administrative expenditures and expenditures related to a member of the board attending educational conferences that are paid by the bankruptcy trust, if any.

(8) As used in this section, "appointing authority" is the authority identified by the court or the plan for adjustment.

**History:** Add. 2016, Act 557, Imd. Eff. Jan. 10, 2017
**Compiler's Notes:** Enacting section 1 of Act 557 of 2016 provides:"Enacting section 1. It is the intent of the legislature that a bankruptcy trust as defined in the amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, must provide for the removal and reappointment of members of the board of trustees, and the legislature finds and declares that providing that removal and appointment is necessary to the efficient operation and administration of the bankruptcy trust for the benefit of bankruptcy trust beneficiaries."Enacting section 2 of Act 557 of 2016 provides:"Enacting section 2. If there is a conflict between the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, and a plan for adjustment as defined in the

amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, the plan for adjustment must control."

### 38.1214b Compensation.

Sec. 4b.

Subject to a plan for adjustment, if a bankruptcy trust provides for the compensation of the members of the board of trustees, a member of the board may decline compensation from the bankruptcy trust.

**History:** Add. 2016, Act 557, Imd. Eff. Jan. 10, 2017
**Compiler's Notes:** Enacting section 1 of Act 557 of 2016 provides:"Enacting section 1. It is the intent of the legislature that a bankruptcy trust as defined in the amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, must provide for the removal and reappointment of members of the board of trustees, and the legislature finds and declares that providing that removal and appointment is necessary to the efficient operation and administration of the bankruptcy trust for the benefit of bankruptcy trust beneficiaries."Enacting section 2 of Act 557 of 2016 provides:"Enacting section 2. If there is a conflict between the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, and a plan for adjustment as defined in the amendatory act that added section 4a to the public employee health care fund investment act, 1999 PA 149, MCL 38.1211 to 38.1216, the plan for adjustment must control."

### 38.1215 Investment of trust assets; resolution.

Sec. 5.

The legislative body of a public corporation may, by resolution, allow a trust to invest the assets of the trust in accordance with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140. The resolution shall include the following:

(a) A statement of the authority under which the trust is established.

(b) Approval to invest the assets of the trust in accordance with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

### 38.1216 Actuarial review; report.

Sec. 6.

The investment fiduciary shall have an actuarial review of the fund or trust prepared at least every 5 years with assets valued on a market related basis. The investment fiduciary shall prepare and issue a summary annual report to the legislative body of the public corporation that established the fund or trust.

**History:** 1999, Act 149, Imd. Eff. Nov. 1, 1999

## THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF 1979

### Act 300 of 1980

AN ACT to provide a retirement system for the public school employees of this state; to create certain funds for this retirement system; to provide for the creation of a retirement board; to prescribe the powers and duties of the

retirement board; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; to authorize and make appropriations for the retirement system; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

*The People of the State of Michigan enact:*
Article 1

### 38.1301 Short title.

Sec. 1.

This act shall be known and may be cited as "the public school employees retirement act of 1979".

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

### 38.1302 Meanings of words and phrases.

Sec. 2.

For the purposes of this act, the words and phrases defined in sections 3 to 8 have the meanings ascribed to them in those sections.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

### 38.1303 Definitions; A.

Sec. 3.

(1) "Accumulated contributions" means 1 or more of the following:
(a) The amounts credited to a member's individual subaccount in the reserve for employee contributions plus regular interest on those amounts.
(b) The amounts credited to a member's individual subaccount in the reserve for member investment plan plus compound interest on those amounts.
(2) "Active duty" means full-time duty in the armed forces other than active duty which is exclusively for training purposes.
(3) "Actuarial cost" means an amount that shall be paid, except as otherwise specifically provided by this act, by a member to purchase additional service credit as allowed under this act. Actuarial cost shall be computed as provided in section 79.
(4) "Armed forces" means the United States army, navy, marine corps, air force, and coast guard, including the reserve components.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1303a "Compensation" explained.

Sec. 3a.

(1) Except as otherwise provided in this act, "compensation" means the remuneration earned by a member for service performed as a public school employee.

(2) Compensation includes salary and wages and all of the following:

(a) Remuneration earned for all services performed as a public school employee including, but not limited to, teaching, coaching, and participation in extracurricular activities.

(b) On a current basis, investments made in a tax sheltered annuity for a public school employee as remuneration for service under this act. The remuneration shall be valued at the amount of money actually paid into the annuity.

(c) All amounts deducted from the pay of a public school employee, including amounts deducted pursuant to the member investment plan.

(d) Longevity pay.

(e) Overtime pay for service performed outside of what is considered normal working hours for the affected employee.

(f) Pay for vacation, holiday, and sick leave while absent from work. As used in this subdivision, "sick leave" includes weekly worker's disability compensation payments received for personal injury in the employ of and while employed by a reporting unit.

(g) Items of deferred compensation, exclusive of employer contributions to the retirement system.

(h) Merit pay as established by a reporting unit for the purpose of rewarding achievement of specific performance objectives.

(3) Compensation does not include any of the following:

(a) Payments for unused sick or annual leave.

(b) Bonus payments.

(c) Payments for hospitalization insurance and life insurance premiums.

(d) Other fringe benefits paid by and from the funds of employers of public school employees.

(e) Remuneration paid for the specific purpose of increasing the final average compensation.

(f) Compensation in excess of an amount over the level of compensation reported for the preceding year except increases provided by the normal salary schedule for the current job classification. In cases where the current job classification in the reporting unit has less than 3 members, the normal salary schedule for the most nearly identical job classification in the reporting unit or in similar reporting units shall be used.

(4) The retirement board shall require a sworn affidavit from the member that final compensation does not include remuneration paid either directly or indirectly for actual or anticipated expenses.

(5) Based upon information and documentation provided by the member, the retirement board shall determine both of the following:

(a) Whether any form of remuneration paid to a member is identified in this section.

(b) Whether any form of remuneration that is not identified in this section should be considered compensation reportable to the retirement system under this section.

(6) In any case where a petitioner seeks to have remuneration included in compensation reportable to the retirement system, the petitioner shall have the burden of proof.

**History:** Add. 1996, Act 268, Imd. Eff. June 12, 1996
**Popular Name:** Act 300

### 38.1304 Definitions; C to M.

Sec. 4.

(1) "Compound interest" means interest compounded annually on July 1 on the contributions on account as of the previous July 1 and computed at the rate of investment return determined under section 104a(1) for the last completed state fiscal year.

(2) "Contributory service" means credited service other than noncontributory service.

(3) "Deferred member" means a member who has ceased to be a public school employee and has satisfied the requirements of section 82 for a deferred vested service retirement allowance.

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

(5) "Designated date" means September 30, 2006.

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

(7) "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.

(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 such 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. However, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(g) Beginning January 1, 2008, except as otherwise provided in this subsection, "eligible retirement plan" means a Roth individual retirement account as described in section 408A of the internal revenue code, 26 USC 408A.

(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 any 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) "Employee organization professional services leave" or "professional services leave" means a leave of absence that is renewed annually by the reporting unit so that a member may accept a position with a public school employee organization to which he or she belongs and which represents employees of a reporting unit in employment matters. The member shall be included in membership of the retirement system during a professional services leave if all of the conditions of section 71(5) and (6) are satisfied.

(11) "Employee organization professional services released time" or "professional services released time" means a portion of the school fiscal year during which a member is released by the reporting unit from his or her regularly assigned duties to engage in employment matters for a public school employee organization to which he or she belongs. The member's compensation received or service rendered, or both, as applicable, by a member while on professional services released time shall be reportable to the retirement system if all of the conditions of section 71(5) and (6) are satisfied.

(12) "Final average compensation" means the aggregate amount of a member's compensation earned within the averaging period in which the aggregate amount of compensation was highest divided by the member's number of years, including any fraction of a year, of credited service during the averaging period. The averaging period shall be 36 consecutive calendar months if the member contributes to the member investment plan except for a member who contributes to the member investment plan and first became a member on or after July 1, 2010; otherwise, the averaging period shall be 60 consecutive calendar months. A member who contributes to the member investment plan and first became a member on or after July 1, 2010 shall also have an averaging period of 60 consecutive

calendar months. If the member has less than 1 year of credited service in the averaging period, the number of consecutive calendar months in the averaging period shall be increased to the lowest number of consecutive calendar months that contains 1 year of credited service.

(13) "Health benefits" means hospital, medical-surgical, and sick care benefits and dental, vision, and hearing benefits for retirants, retirement allowance beneficiaries, and health insurance dependents provided pursuant to section 91.

(14) "Internal revenue code" means the United States internal revenue code of 1986.

(15) "Long-term care insurance" means group insurance that is authorized by the retirement system for retirants, retirement allowance beneficiaries, and health insurance dependents, as that term is defined in section 91, to cover the costs of services provided to retirants, retirement allowance beneficiaries, and health insurance dependents, from nursing homes, assisted living facilities, home health care providers, adult day care providers, and other similar service providers.

(16) "Member investment plan" means the program of member contributions described in section 43a.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1982, Act 197, Imd. Eff. July 1, 1982 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 193, Imd. Eff. Aug. 25, 1989 ;-- Am. 1995, Act 177, Imd. Eff. Oct. 17, 1995 ;-- Am. 1996, Act 268, Imd. Eff. June 12, 1996 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2003, Act 17, Imd. Eff. June 10, 2003 ;-- Am. 2007, Act 15, Imd. Eff. June 6, 2007 ;-- Am. 2008, Act 354, Imd. Eff. Dec. 23, 2008 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010

**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

**Popular Name:** Act 300

## 38.1305 Definitions; M, N.

Sec. 5.

(1) "Member" means a public school employee, except that member does not include any of the following:

(a) An individual enrolled in a neighborhood youth corps program operated with funds from the federal office of economic opportunity or an individual enrolled in a comparable youth training program designed to prevent high school dropouts and rehabilitate high school dropouts operated by an intermediate school district.

(b) An individual enrolled in a transitional public employment program and employed by a reporting unit.

(c) An individual employed by a reporting unit while enrolled as a full-time student in that same reporting unit.

(d) An individual who elects to participate in the optional retirement program under the optional retirement act of 1967, 1967 PA 156, MCL 38.381 to 38.388.

(e) A retirant of this retirement system.

(f) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit through a summer youth employment program established under the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229.

(g) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit to administer a program described in subdivision (f), (h), (i), (j), or (k).

(h) After September 30, 1983, an individual, not regularly employed by a reporting unit, who is employed by a reporting unit through participation in a program established under the former job training partnership act, Public Law 97-300, 96 Stat 1322 or beginning July 1, 2000, the workforce investment act of 1998, Public Law 105-220, 112 Stat 936.

(i) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit through participation in a program established under the PATH program under section 57f of the social welfare act, 1939 PA 280, MCL 400.57f.

(j) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit through participation in a program established under the Michigan community service corps program, first established under sections 25 to 35 of 1983 PA 259.

(k) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit through participation in a program established under the older American community service employment program under the older American community service employment act, title V of the older Americans act of 1965, Public Law 89-73, 42 USC 3056 to 3056p.

(l) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit in a temporary, intermittent, or irregular seasonal or athletic position and who is under the age of 19 years.

(m) An individual, not regularly employed by a reporting unit, who is employed by a reporting unit only in a temporary position to assist in the conduct of a school election.

(n) A qualified participant who makes a valid election under section 81d(1) to not become a member of Tier 1.

(o) A qualified participant who is not a member of Tier 1 under section 81d(4).

(p) Beginning with the effective date of the amendatory act that added section 42a, an individual employed by a reporting unit while enrolled as a student in that same reporting unit if the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2. However, an individual who, on the effective date of the amendatory act that added section 42a, is a member and is employed by a reporting unit while enrolled as a student in that same reporting unit and the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2 will remain a member while employed as described in this subdivision if the individual elects to remain a member. The retirement system shall determine a method of administering elections under this subdivision.

(2) "Membership service" means service performed after June 30, 1945.

(3) "Noncontributory plan" means the plan which began between July 1, 1974 and July 1, 1977, in which the reporting unit elected to discontinue withholding contributions from employees' compensation.

(4) "Noncontributory service" means credited service rendered under the noncontributory plan.

(5) "Nonteacher" means an individual employed by a reporting unit who is not a teacher as defined in section 8.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1983, Act 111, Imd. Eff. July 12, 1983 ;-- Am. 1984, Act 166, Imd. Eff. June 28, 1984 ;-- Am. 1984, Act 302, Imd. Eff. Dec. 21, 1984 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1987, Act 163, Imd. Eff. Nov. 5, 1987 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994 ;-- Am. 1998, Act 123, Imd. Eff. June 10, 1998 ;-- Am. 2000, Act 150, Imd. Eff. June 8, 2000 ;-- Am. 2001, Act 180, Imd. Eff. Dec. 21, 2001 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017 ;-- Am. 2018, Act 328, Imd. Eff. July 2, 2018

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

### 38.1306 Definitions; O, P.

Sec. 6.

(1) "Original member" means a member employed in Michigan public schools before July 1, 1945.

(2) "Out of system public education service" means service performed in public education meeting 1 or more of the following requirements:

(a) Performed in other states in the United States or its territorial possessions.

(b) Performed at the university of Michigan, Michigan state university, Wayne state university, Grand Valley state university, Oakland university, or Saginaw Valley university.

(c) Service purchased before January 31, 1991 and performed in a juvenile training school operated by a county in this state.

(d) Service purchased before January 31, 1991 and performed in a community mental health service program operated under former 1963 PA 54 for the developmentally disabled in day care programs, day training programs, or day care training programs that were transferred to an intermediate school district by direction of the department of education.

(e) Service purchased before January 31, 1991 and performed as an elementary or secondary teacher at a United States armed forces military base in the United States or a foreign country.

(f) Service purchased before January 31, 1991 and performed as a teacher or administrator of American nationals in overseas public elementary or secondary schools operated by the United States department of defense.

(g) Performed by an individual who first becomes employed by an institution of higher education described in section 4, 5, or 6 of article VIII of the state constitution of 1963 on or after January 1, 1996.

(3) "Prior service" means service performed before July 1, 1945.

(4) "Public local school district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, regardless of previous classification, or a school district of the first class under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(5) Except as otherwise provided in this subsection, "public school academy" means a public school academy established under part 6a of the revised school code, 1976 PA 451, MCL 380.501 to 380.507; an urban high school academy established under part 6c of the revised school code, 1976 PA 451, MCL 380.521 to 380.529; a school of

excellence established under part 6e of the revised school code, 1976 PA 451, MCL 380.551 to 380.561; or a strict discipline academy established under sections 1311b to 1311m of the revised school code, 1976 PA 451, MCL 380.1311b to 380.1311m. Public school academy does not include any of the following:

(a) A public school academy operated by a state public university that is not subject to the optional retirement act of 1967, 1967 PA 156, MCL 38.381 to 38.388.

(b) A public school academy corporation formed by a state public university that is not subject to the optional retirement act of 1967, 1967 PA 156, MCL 38.381 to 38.388.

(6) Except as otherwise provided in this subsection, "public school employee" means an employee of a public local school district, intermediate school district, public school academy, tax supported community or junior college, eastern Michigan university, central Michigan university, northern Michigan university, western Michigan university, Ferris state university, Michigan technological university, Lake Superior state university, or district library as defined in section 69g if the conditions in section 69g(1) are met for that employee. Service at Michigan technological university shall be creditable only if the amount of the accumulated contributions in the state employees' retirement system created by the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, for service is paid to the retirement system. Service at Ferris state university shall be creditable as prior service or membership service only if the employee was employed at Ferris state university on a full-time basis for 2 or more years after May 17, 1949. Until January 1, 1988, public school employee also includes an individual holding a Michigan teacher certificate and serving as an employee of the Michigan high school athletic association, other than a person whose effective date of employment with the Michigan high school athletic association is on or after December 31, 1986. Public school employee includes a public school employee on an approved leave of absence that does not exceed 2 years from the date the employee ceases to accumulate service credit. Public school employee does not include an individual who first becomes employed by a university described in this subsection on or after January 1, 1996, or an employee who is hired but has not yet performed services for remuneration under an express or implied contract with a reporting unit.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1987, Act 163, Imd. Eff. Nov. 5, 1987 ;-- Am. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1993, Act 318, Eff. Dec. 31, 1993 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994 ;-- Am. 1995, Act 272, Eff. Mar. 28, 1996 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2014, Act 71, Imd. Eff. Mar. 28, 2014

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

## 38.1307 Definitions; R.

Sec. 7.

(1) "Refund beneficiary" means 1 or more persons whom the member or former member nominates in writing and files with the retirement system for the purpose of being paid accumulated contributions in the event of the death of the member or former member. If a valid nomination is not on file, the retirement board shall pay the accumulated contributions to the legal representative of the deceased member or deceased former member, if any, or to the estate of the deceased member or deceased former member.

(2) "Regular interest" means interest at 1 or more rates per annum determined by the retirement board and compounded annually.

(3) Except as otherwise provided in this subsection, "reporting unit" means a public school district, intermediate school district, public school academy, tax supported community or junior college, or university, or an agency having employees on its payroll who are members of this retirement system. The reporting unit shall be the employer for purposes of this act. On and after January 1, 1996, reporting unit does not include a university, except to the extent that university has employees on its payroll who are members of this retirement system.

(4) "Retirant" means a member who retires with a retirement allowance payable from reserves of the retirement system.

(5) "Retirement allowance" means a payment for life or a temporary period provided for in this act to which a retirant, retirement allowance beneficiary, or refund beneficiary is entitled.

(6) "Retirement allowance beneficiary" means a person who is being paid or has entitlement to the payment of a retirement allowance in the event of the death of a member, deferred member, or retirant.

(7) "Retirement board" means the board provided to administer this retirement system.

(8) "Retirement system" means the Michigan public school employees' retirement system provided for in this act.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1993, Act 318, Imd. Eff. Dec. 31, 1993 ;-- Am. 1995, Act 272, Eff. Mar. 28, 1996
**Popular Name:** Act 300

### 38.1308 Definitions; S, T.

Sec. 8.

(1) "Service" means personal service performed as a public school employee or creditable under this act.
(2) "Simple interest" means interest at 1 or more rates per annum determined by the retirement board.
(3) "State of Michigan service" means service performed as a state employee in the classified or unclassified service under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.
(4) "Teacher" means a person employed by a reporting unit who is engaged in teaching, who is engaged in administering and supervising teaching, or who is under a teacher's contract with a reporting unit.
(5) "Tier 1" means the retirement plan available to a member under this act.
(6) "Tier 2" means the state of Michigan 457 plan established under section 457 of the internal revenue code, 26 USC 457, for elective employee contributions and the state of Michigan 401(k) plan established under section 401(k) of the internal revenue code, 26 USC 401, for employer contributions.
(7) "Transition date" means the first day of the pay period that begins on or after February 1, 2013 for the applicable member. The retirement system shall determine a method of determining service credit, compensation, and any applicable contributions for purposes of implementing provisions of this act that refer to the transition date.
(8) "Transitional public employment program" means participation in public service employment programs in the areas of environmental quality, health care, education, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans' outreach, and other fields of human betterment and community improvement as part of a program of comprehensive manpower services authorized, undertaken, and financed under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2012, Act 359, Imd. Eff. Dec. 14, 2012
**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:“Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1309 Calculating member's final average compensation; effective date of section.

Sec. 9.

(1) The definition of final average compensation under section 4 as that section existed prior to Act No. 91 of the Public Acts of 1985 shall be used to calculate a member's final average compensation if it produces a higher result than the amount calculated pursuant to either section 4 or section 43c.
(2) This section shall take effect July 10, 1985.

**History:** Add. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1321 Public school employees' retirement system; creation.

Sec. 21.

A Michigan public school employees' retirement system is created for the public school employees of this state.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

### 38.1322 Public school employees' retirement board; creation; appointment, qualifications, and terms of members; vacancy.

Sec. 22.

(1) The Michigan public school employees' retirement board is created in the department and shall consist of the superintendent of public instruction and 11 members appointed by the governor with the advice and consent of the senate as follows:

(a) Two members who are working as classroom teachers or as other certified school personnel.

(b) One nonteacher member who is working in a noncertified educational support position or a retirant who retired from a noncertified educational support position.

(c) One member who is a school system superintendent.

(d) One member who is working in a school system in a finance or operations management position, but who is not a school system superintendent.

(e) One retirant who retired from a classroom teacher position.

(f) One retirant who retired from a finance or operations management position.

(g) One administrator or trustee of a community college, which community college is a reporting unit.

(h) Two from the general public, 1 of which shall have experience in health insurance or actuarial science and 1 of which shall have experience in institutional investments. An individual appointed under this subdivision shall not be a member, deferred member, retirant, or retirement allowance beneficiary under this act.

(i) One elected member of a reporting unit's board of control.

(2) One of the retirement board members under subsection (1) shall be a member who is an employee of a school district of the first class or a retirant who retired from a position as an employee of a school district of the first class. One of the retirant members of the retirement board shall be selected from the membership of the largest organization of retirants.

(3) The term of office of the retirement board members shall be 4 years. A vacancy of a member on the retirement board shall be filled in the same manner as the original appointment for the remainder of the unexpired term. A retirement board member shall continue to hold office until a successor is appointed and has qualified, but not to exceed an additional 4 years.

(4) The 7 members appointed and serving on the retirement board on July 1, 1997 shall have their respective terms extended by 2 years and shall serve for the remainder of their extended terms. As each board member's term expires under this subsection, the new appointment shall be made in accordance with subsection (1). On January 1, 1997, 2 new individuals shall be appointed as members of the retirement board in accordance with subsection (1). The initial terms of office of these 2 new members shall expire on March 30, 2001. On October 31, 1997, 2 new individuals shall be appointed as members of the retirement board in accordance with subsection (1). The initial terms of office of these 2 new members shall expire on March 30, 2000.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997
**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:“Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”For the abolishment and replacement of the requirement under subsection (2) that one member of the Michigan public school employees' retirement board be a retired employee of a school district in the first class, see E.R.O. No. 2024-2, compiled at MCL 16.735.
**Popular Name:** Act 300

**38.1323 Retirement board; oath; conducting business at public meeting; notice of meeting; quorum; failure to attend scheduled meetings; availability of writings to public.**

Sec. 23.

(1) A member of the retirement board, upon appointment, shall take an oath of office, which shall be filed immediately in the office of the secretary of state.

(2) The business which the retirement board may perform shall be conducted at a public meeting of the retirement board held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended. A majority of the retirement board constitutes a quorum for the transaction of business at a meeting of the board. A member of the retirement board who fails to attend 3 consecutive regularly scheduled meetings of the board, without valid excuse, shall be considered as having resigned from retirement board membership, and the retirement board shall declare the member's office vacated as of the date of adoption of a proper resolution.

(3) A writing prepared, owned, used, in the possession of, or retained by the retirement board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

**38.1324 Retirement board; compensation and expenses.**

Sec. 24.

The per diem compensation of the retirement board and the schedule for reimbursement of expenses incurred in attending meetings of the retirement board and in performing the required services of the members shall be established annually by the legislature.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

**38.1325 Retirement board; rights, authority, and discretion; rules; limitation; study period; information to be provided to certain universities.**

Sec. 25.

(1) The board shall have only the rights, authority, and discretion in the proper discharge of its duties provided in this act and former 1945 PA 136.

(2) The retirement board may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the implementation and administration of this act. The retirement board shall not promulgate rules for the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan.

(3) Beginning September 1, 2012, the retirement system shall commence a 12-month study period under this subsection. As soon as possible during the study period, the retirement system shall provide to central Michigan university, Ferris state university, Lake Superior state university, Michigan technological university, northern Michigan university, western Michigan university, and eastern Michigan university information and cooperation requested by the universities for the purpose of allowing the universities to study and prepare for the implementation of new retiree health care coverage benefit design options for members who retire from the

universities. The information to be provided by the retirement system to the universities shall also include information sufficient to allow the universities to do all of the following:

(a) Review the annual cost to the retirement system over each of the past 5 years of the health care coverage benefits provided by the retirement system to the retired members of the universities, calculated on a cash disbursement method.

(b) Compare the cost to the universities cost under subdivision (a) with that of the aggregate cost of all reporting units during the past 5 years, calculated on a cash disbursement basis.

(c) Prepare and submit the results of the study under this subsection to the retirement system, along with any proposed recommendations on possible changes to the scope and design of the health benefits available through the retirement system to members who retire from the universities identified in this subsection. The retirement system shall submit written confirmation to the universities within 180 days that the retirement system has received the results of the study and any recommendations under this subdivision, has reviewed and responded to the study and any recommendations, and has submitted a copy of the study and any recommendations to the retirement board for a discussion of the implementation of any recommendations.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.Section 2 of Act 488 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300
**Admin Rule:** R 38.1101 et seq. of the Michigan Administrative Code.

### 38.1326 State treasurer as treasurer of retirement system; investment authority; fiduciary responsibility; disposition of funds.

Sec. 26.

(1) This section does not apply to Tier 2.

(2) The state treasurer shall be treasurer of the retirement system and shall have investment authority, including the custodianship of the funds of the retirement system, and shall have fiduciary responsibility with regard to the investment of funds of the retirement system.

(3) The state treasurer shall deposit the funds of the retirement system in the same manner and subject to the law governing the deposit of state funds by the treasurer. Income earned by the retirement system's funds shall be credited to the respective reserves under this act that earned the income.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1327 Warrants.

Sec. 27.

The retirement system shall draw its warrants upon the state treasurer, payable out of reserves of the retirement

system, for the payment of retirement allowances, the refund of accumulated contributions as provided in this act, and the payment of salaries and other expenses necessary in the administration of the retirement system. The payment of retirement allowances shall be in equal monthly installments.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1328 Summary of fiscal transactions; contents; description of retirement benefits; information to be posted on internet website and sent via electronic mail; database.

Sec. 28.

(1) By April 15 of each year, the department shall furnish to the governor, the legislature, each retirement allowance recipient, and each member a summary of the fiscal transactions of the retirement system for the last completed fiscal year. The summary shall contain at least the following information from the financial and actuarial statements:

(a) A statement of assets and liabilities.

(b) A statement of investments by, and amount earned in, each category.

(c) A statement of revenues and expenditures.

(d) In addition to other disclosures required under this act that are based on expected returns on assets, a disclosure of the market-value discount rate that is used in calculating system liabilities and funded status of the system. The retirement system shall use the individual projected benefit entry age normal cost method of valuation when making the disclosure required in this subdivision.

(e) A disclosure of the funded status of the system that is based on the market value of assets with no smoothing. The retirement system shall use the individual projected benefit entry age normal cost method of valuation when making the disclosure required in this subdivision.

(f) A 5-year projection of the annual level percentage of payroll contribution rate required of reporting units under this act.

(g) Using the market-value discount rate disclosed under subdivision (d), a disclosure of the normal cost contribution rate.

(h) Other information the department or the retirement board considers necessary.

(2) The department shall furnish sufficient copies of a description of retirement benefits under this act to each reporting unit for the purpose of distribution to each of its employees as often as the department considers necessary, but not less than once every 3 years. The description shall contain the information the department considers necessary.

(3) By April 15 of each year, the department shall post on its internet website the information required under subsection (1) and shall send the information via electronic mail to each retirement allowance recipient and each member for which it has an electronic mail address.

(4) The department shall collect and maintain an electronic mail address for retirement allowance recipients and members under this act. In conjunction with the center for educational performance and information in the state budget office, the department shall develop and maintain a database of electronic mail addresses for retirement allowance recipients and members under this act. The department shall allow the department of education to access the electronic mail database developed and maintained under this subsection on an as-needed basis. The electronic mail addresses of individuals in the database under this subsection are confidential and are not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

**38.1329 Reserve for employee contributions; individual subaccounts; refund, payment, or transfer of accumulated contributions.**

Sec. 29.

The reserve for employee contributions is the account in which member contributions made under the contributory retirement plan and other member payments as provided by statute shall be accumulated. The retirement board shall provide for the maintenance of an individual subaccount for each member of the retirement system showing the amount of the member's contributions together with regular interest accumulations on the amount. The contributions refunded to a member upon the member's withdrawal from service or paid to the member's legal representative, estate, or refund beneficiary in event of the member's or former member's death shall be paid from the reserve for employee contributions. Accumulated contributions not refunded to a member or paid to the member's or former member's legal representative, estate, or refund beneficiary shall be transferred from the reserve for employee contributions to the reserve for employer contributions. The accumulated contributions of a member, upon retirement or upon death if a retirement allowance is payable, shall be transferred from the reserve for employee contributions to the reserve for retired benefit payments.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1330 Reserve for employer contributions.**

Sec. 30.

The reserve for employer contributions is the account to which reporting unit payments, except payments for health benefits are credited.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994
**Popular Name:** Act 300

**38.1331 Reserve for administrative expenses.**

Sec. 31.

The reserve for administrative expenses is the account from which the expenses of the administration of the retirement system, exclusive of amounts payable as retirement allowances and other benefits provided in this act, shall be paid. An amount determined necessary by the retirement board and the department to cover the expenses of administering this act shall be transferred annually from the reserve for undistributed investment income to the reserve for administrative expenses.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1332 General fund.**

Sec. 32.

The retirement board may establish a general fund. Revenue not clearly payable to other funds shall be deposited in the general fund. Disbursements from this fund shall be made as authorized by the retirement board.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

**38.1333 Reserve for member investment plan; remittance of member contributions; individual subaccounts; refund, payment, or transfer of accumulated contributions.**

Sec. 33.

The reserve for member investment plan is the account into which are remitted member contributions as provided in section 43a. The retirement board shall provide for the maintenance of an individual subaccount for each member showing the amount of the member's contributions together with compound interest accumulation on that amount. Member investment plan accumulated contributions refunded to a member upon a member's withdrawal from service or paid to the member's legal representative, estate, or refund beneficiary in the event of the member's or former member's death shall be paid from the reserve for member investment plan. Member investment plan accumulated contributions not refunded to a member or paid to the member's or former member's legal representative, estate, or refund beneficiary shall be transferred from the reserve for member investment plan to the reserve for employer contributions. The member investment plan accumulated contributions of a member, upon retirement or upon death if a retirement allowance is payable, shall be transferred from the reserve for member investment plan to the reserve for retired benefit payments.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1334 Reserve for health benefits; payments; health advance; funding subaccount; transfer to reserve for employer contributions; conditions.**

Sec. 34.

(1) The reserve for health benefits is the account to which payments of reporting units for health benefits are credited. Benefits payable pursuant to section 91 shall be paid from the reserve for health benefits. The assets and any earnings on the assets contained in the reserve for health benefits and the health advance funding subaccount are not to be treated as pension assets for any purpose.

(2) The health advance funding subaccount is the account to which amounts transferred pursuant to section 41 are credited. Except as otherwise provided in this section, any amounts received in the health advance funding subaccount and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 91 is at least 100% funded. The department may expend funds or transfer funds to another account to expend for health benefits under section 91 if the actuarial accrued liability for health benefits under section 91 is at least 100% funded. For each fiscal year that begins after the first fiscal year in which the actuarial accrued liability for health benefits under section 91 is at least 100% funded by the health advance funding subaccount, the amounts may be expended or credited to fund health benefits provided under section 91 as provided in section 41(2).

(3) Notwithstanding any other provision of this section, the department may transfer amounts from the health advance funding subaccount to the reserve for employer contributions established in section 30 if the department does both of the following:

(a) At least 45 days before the intended transfer, submits a request to the chairs of the senate and house appropriations committees and, at least 15 days before the intended transfer, obtains the approval of both the senate and house appropriations committees.

(b) Ensures that the request submitted to the senate and house appropriations committees contains an actuarial valuation prepared pursuant to section 41 that demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions does not exceed the actuarial present value of benefits.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1994, Act 272, Imd. Eff. July

11, 1994 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002
**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1335 Reserve for retired benefit payments.

Sec. 35.

The reserve for retired benefit payments is the account from which all retirement allowances and refunds pursuant to section 85(6) shall be paid. After receipt of each annual actuarial valuation as provided in section 41, the balance in the reserve for retired benefit payments shall be brought into balance with the actuarial present value of retirement allowances to be paid after the end of the fiscal year to retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal year, by a transfer between the reserve for employer contributions and the reserve for retired benefit payments.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1336 Reserve for undistributed investment income; pension stabilization subaccount.

Sec. 36.

(1) Except as otherwise provided in this section, the reserve for undistributed investment income is the account to which all income from the investment of assets, all gifts and bequests received by the retirement system, and all other money received by the retirement system the disposition of which is not specifically provided for is credited. The retirement board shall determine the income, interest, and dividends attributable to the health advance funding subaccount created by section 34(2). The income, interest, and dividends attributable to the health advance funding subaccount shall be credited to the health advance funding subaccount. In each fiscal year, the retirement board shall transfer from the reserve for undistributed investment income all amounts necessary to credit the interest required under this act to the reserve for employee contributions, the reserve for employer contributions, the reserve for member investment plan, the reserve for retired benefit payments, and the reserve for health benefits, to fund the reserve for administrative expenses, and any supplemental payments required pursuant to section 104a.

(2) The pension stabilization subaccount is the account to which the amounts transferred pursuant to subsection (3) to the reserve for undistributed investment income are credited. Except as otherwise provided in this subsection, no amounts shall be transferred from the stabilization subaccount to any other reserve. The director of the department may transfer part or all of the pension stabilization subaccount to the reserve for employer contributions. After the department has transferred the entire balance of the pension stabilization subaccount to the reserve for employer contributions created by section 30, the pension stabilization subaccount created by this subsection shall be closed and subsection (3) shall no longer apply.

(3) Beginning on the designated date, if the actuarial valuation prepared pursuant to sections 41 and 41a demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions exceeds the actuarial present value of benefits, an amount equal to the excess shall be credited to the pension stabilization subaccount pursuant to subsection (2) and shall be debited against the reserve for employer contributions.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002
**Popular Name:** Act 300

Article 3

**38.1341 Determining annual level percentage of payroll contribution rates; factors; unfunded actuarial accrued liability contribution rate; computation and certification of sum due and payable; payment; certification of actual aggregate compensation; adjustment; evidence of correctness; audit; duties of reporting unit; submission of difference occurring in certain fiscal years; interest rate; reassignment of assets; rate of investment return; basis of asset valuation; use of salary increase assumption; deposit to health advance funding subaccount; allocations from employer contributions; experience investigation study; risk assumptions; report; pension and retiree health care payroll growth assumption rate; "university reporting unit" defined.**

Sec. 41.

(1) The annual level percentage of payroll contribution rates to finance benefits being provided and to be provided by the retirement system must be determined by actuarial valuation under subsection (2) on the basis of the risk assumptions that the retirement board and the department adopt after consultation with the state treasurer and an actuary. An annual actuarial valuation must be made of the retirement system to determine the actuarial condition of the retirement system and the required contribution to the retirement system. An annual actuarial gain-loss experience study of the retirement system must be made to determine the financial effect of variations of actual retirement system experience from projected experience.

(2) Except as otherwise provided in sections 41a and 41b, the annual contribution rates for benefits are subject to all of the following:

(a) Except as otherwise provided in this subdivision, the contribution rate for benefits must be computed using an individual projected benefit entry age normal cost method of valuation. If the contributions described in section 43e are determined by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted to be unconstitutional and the contributions are not deposited into the appropriate funding account referenced in section 43e, the contribution rate for health benefits provided under section 91 must be computed using a cash disbursement method.

(b) Subject to subdivision (c), the contribution rate for service likely to be rendered in the current year, the normal cost contribution rate, for reporting units must be determined as follows:

(i) Calculate the aggregate amount of individual projected benefit entry age normal costs.

(ii) Divide the result of the calculation under subparagraph (i) by 1% of the aggregate amount of active members' valuation compensation.

(c) Except for the employee portion of the normal cost contribution rates for members under section 41b(2), and except as otherwise provided in this subdivision, beginning with the state fiscal year ending September 30, 2018 and for each subsequent fiscal year, the normal cost contribution rate must not be less than the normal cost contribution rate in the immediately preceding state fiscal year. Beginning in the state fiscal year ending September 30, 2026, and for each subsequent state fiscal year, this subdivision does not apply to the normal cost contribution rate for retiree health benefits provided under section 91.

(d) Subject to subdivision (e), the contribution rate for unfunded service rendered before the valuation date, the unfunded actuarial accrued liability contribution rate, must be determined as follows:

(i) Calculate the aggregate amount of unfunded actuarial accrued liabilities of reporting units as follows:

(A) Calculate the actuarial present value of benefits for members attributable to reporting units.

(B) Calculate the actuarial present value of future normal cost contributions of reporting units.

(C) Calculate the actuarial present value of assets on the valuation date.

(D) Add the results of sub-subparagraphs (B) and (C).

(E) Subtract from the result of the calculation under sub-subparagraph (A) the result from the calculation under sub-subparagraph (D).

(ii) Subject to subsection (18), divide the result of the calculation under subparagraph (i) by 1% of the actuarial present value over a period not to exceed 50 years of projected valuation compensation.

(e) Except for the employee portion of the unfunded actuarial accrued liability contribution rates for members under section 41b(2), beginning with the state fiscal year ending September 30, 2018 and for each subsequent fiscal year until the state fiscal year ending September 30, 2021, the unfunded actuarial accrued liability contribution rate must not be less than the unfunded actuarial accrued liability contribution rate in the preceding state fiscal year. Except as otherwise provided in this subdivision, beginning with the state fiscal year ending September 30, 2022, and for each subsequent fiscal year until the unfunded actuarial accrued liability is fully paid, the unfunded actuarial accrued liability contribution amount due and payable must not be less than the unfunded actuarial accrued liability contribution amount due and payable in the preceding state fiscal year. For the state fiscal year ending September 30, 2025, the unfunded actuarial accrued liability contribution due and payable must be equal to the actuarially determined contribution. For a reporting unit that is a university reporting unit, for the state fiscal years ending

September 30, 2023 and September 30, 2024, the unfunded actuarial accrued liability contribution due and payable must be equal to the actuarially determined contribution. For a reporting unit that is a university reporting unit, for the state fiscal years ending September 30, 2023 and September 30, 2024, the contribution must reflect the appropriations made under section 236h of the state school aid act of 1979, 1979 PA 94, MCL 388.1836h, as amended by 2022 PA 144 and 2023 PA 103.

(f) Except as otherwise provided in this subsection, beginning with the state fiscal year ending September 30, 2013 and for each subsequent fiscal year, the unfunded actuarial accrued liability contribution rate applied to payroll must not exceed 20.96% for a reporting unit that is not a university reporting unit. Beginning with the state fiscal year ending September 30, 2026 and for each subsequent fiscal year, the unfunded actuarial accrued liability contribution rate applied to payroll must not exceed 15.21% for a reporting unit that is not a university reporting unit. Any additional unfunded actuarial accrued liability contributions as determined under this section for each fiscal year are to be paid by appropriation from the state school aid fund established by section 11 of article IX of the state constitution of 1963. Except as otherwise provided in this section and sections 41a and 41b, the unfunded actuarial accrued liability contribution rate must be based on and applied to the combined payrolls of the employees who are members or qualified participants, or both.

(g) Beginning with the state fiscal year ending September 30, 2016 and for each subsequent state fiscal year, the unfunded actuarial accrued liability contribution rate applied to the combined payroll, as provided in section 41a, must not exceed 25.73% for a university reporting unit. Any additional unfunded actuarial accrued liability contributions as determined under this section for each fiscal year for university reporting units are to be paid by appropriation under article III of the state school aid act of 1979, 1979 PA 94, MCL 388.1836 to 388.1891.

(3) Before November 1 of each state fiscal year, the executive secretary of the retirement board shall certify to the director of the department the aggregate compensation estimated to be paid public school employees for the state fiscal year.

(4) On the basis of the estimate under subsection (3), the annual actuarial valuation, and any adjustment required under subsection (6), the director of the department shall compute the amount due and payable to the retirement system and shall certify this amount to the reporting units.

(5) Except as provided in section 41b, the reporting units shall pay the amount certified under subsection (4) to the director of the department in equal payroll cycle installments for unfunded actuarial accrued liability contributions and payroll cycle installments for normal cost contributions.

(6) Not later than 90 days after the end of each state fiscal year, the executive secretary of the retirement board shall certify to the director of the department and each reporting unit the actual aggregate compensation paid to public school employees during the preceding state fiscal year. On receipt of that certification, the director of the department may compute any adjustment required to the amount because of a difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate. The difference, if any, must be paid as provided in subsection (9). This subsection does not apply in a fiscal year in which a deposit is made under subsection (14).

(7) The director of the department may require evidence of correctness and may conduct an audit of the aggregate compensation that the director of the department considers necessary to establish its correctness.

(8) A reporting unit shall forward employee and employer Social Security contributions and reports as required by the federal old-age, survivors, disability, and hospital insurance provisions of title II of the social security act, 42 USC 401 to 434.

(9) For an employer of an employee of a local public school district or an intermediate school district, for differences occurring in fiscal years beginning on or after October 1, 1993, a minimum of 20% of any difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6) must be paid by that employer in the next state fiscal year and a minimum of 25% of the remaining difference must be paid by that employer in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. For an employer of other public school employees, for differences occurring in fiscal years beginning on or after October 1, 1991, a minimum of 20% of any difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6) must be paid by that employer in the next state fiscal year and a minimum of 25% of the remaining difference must be paid by that employer in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest must be included for each year that a portion of the remaining difference is carried forward. The interest rate must equal the actuarially assumed rate of investment return for the state fiscal year in which payment is made. This subsection does not apply in a fiscal year in which a deposit is made under subsection (14).

(10) Beginning on September 30, 2006, all assets held by the retirement system must be reassigned their fair market value, as determined by the state treasurer, as of September 30, 2006, and in calculating any unfunded actuarial accrued liabilities, any market gains or losses incurred before September 30, 2006 may not be considered by the retirement system's actuaries.

(11) Except as otherwise provided in this subsection, beginning on September 30, 2006, the actuary used by the retirement board shall assume a rate of return on investments of 8% per annum, as of September 30, 2006, which

rate may only be changed with the approval of the retirement board and the director of the department. Beginning on July 1, 2010, the actuary used by the retirement board shall assume a rate of return on investments of 7% per annum for investments associated with members who first became members after June 30, 2010, and before February 1, 2018, which rate may only be changed with the approval of the retirement board and the director of the department. Beginning on February 1, 2018, the actuary used by the retirement board shall assume a rate of return on investments of 6% per annum for investments associated with members who first became a member on or after February 1, 2018, which rate may only be changed with the approval of the retirement board and the director of the department.

(12) Beginning on September 30, 2006, the value of assets used must be based on a method that spreads over a 5-year period the difference between actual and expected return occurring in each year after September 30, 2006, and the methodology may only be changed with the approval of the retirement board and the director of the department.

(13) Beginning on September 30, 2006, the actuary used by the retirement board shall use a salary increase assumption that projects annual salary increases of 4%. In addition to the 4%, the retirement board shall use an additional percentage based on an age-related scale to reflect merit, longevity, and promotional salary increase. The actuary shall use this assumption until a change in the assumption is approved in writing by the retirement board and the director of the department.

(14) For fiscal years that begin on or after October 1, 2001, if the actuarial valuation prepared under this section demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions exceeds the actuarial present value of benefits, the amount based on the annual level percent of payroll contribution rate under subsections (1) and (2) may be deposited into the health advance funding subaccount created by section 34.

(15) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1686, the benefits that are required to be paid from that fund must be paid from a portion of the employer contributions described in this section or other eligible money. The retirement board shall determine the amount of the employer contributions or other eligible money that must be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible money in the pension fund.

(16) The retirement board and the department shall conduct and review an experience investigation study and adopt risk assumptions on which actuarial valuations are to be based after consultation with the actuary and the state treasurer. The experience investigation study must be completed and risk assumptions must be periodically reviewed at least once every 5 years.

(17) Every April 1 following the periodic review of risk assumptions under subsection (16), the office of retirement services on behalf of the department and the state treasurer shall collaborate to submit a report to the senate majority leader, the speaker of the house of representatives, the senate and house of representatives appropriations committees, and the senate and house fiscal agencies. A report required under this subsection must be published on the office of retirement services' website and include at least all of the following:

(a) Forecasted rate of return on investments at all of the following probability levels:

(i) 5%.

(ii) 25%.

(iii) 50%.

(iv) 75%.

(v) 95%.

(b) The actual rate of return on investments for 10-, 15-, and 20-year intervals.

(c) Mortality assumptions.

(d) Retirement age assumptions.

(e) Payroll growth assumptions.

(f) Any other assumptions that have a material impact on the financial status of the retirement system.

(18) Except as otherwise provided in this subsection, for members who first became members before February 1, 2018, for the state fiscal year ending September 30, 2024, the pension and retiree health care payroll growth assumption rate for a reporting unit that is not a university reporting unit must be 0.75%. Except as otherwise provided in this subsection, for members who first became members before February 1, 2018, beginning with the state fiscal year ending September 30, 2025, and for each subsequent state fiscal year until the pension and retiree health care payroll growth assumption rate for a reporting unit that is not a university reporting unit is zero, the payroll growth assumption rate for a reporting unit that is not a university reporting unit must be reduced by 50 basis points. Beginning with the state fiscal year ending September 30, 2025 and for each subsequent state fiscal year until the rate described in this subsection is zero, if the pension and retiree health care unfunded actuarial accrued liability contribution amount directly attributable to the 50 basis points reduction under this subsection for the fiscal year is 7% or more of the pension and retiree health care unfunded actuarial accrued liability contribution amount in the preceding state fiscal year, the office of retirement services may reduce the rate described in this

subsection by 25 basis points in that current fiscal year instead of the 50 basis point reduction described in this subsection. Beginning with the fiscal year ending September 30, 2022 and for each subsequent state fiscal year until the rate described in this subsection is zero, the office of retirement services and the retirement board may agree to reduce the rate described in this subsection by any number of additional basis points.

(19) As used in this section, "university reporting unit" means a reporting unit that is a university listed in the definition of public school employee under section 6.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1982, Act 197, Imd. Eff. July 1, 1982 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1992, Act 158, Imd. Eff. July 16, 1992 ;-- Am. 1993, Act 164, Imd. Eff. Sept. 16, 1993 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994 ;-- Am. 1996, Act 278, Imd. Eff. June 17, 1996 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2007, Act 15, Imd. Eff. June 6, 2007 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2016, Act 136, Imd. Eff. May 26, 2016 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017 ;-- Am. 2018, Act 181, Imd. Eff. June 11, 2018 ;-- Am. 2018, Act 512, Imd. Eff. Dec. 28, 2018 ;-- Am. 2022, Act 220, Imd. Eff. Oct. 14, 2022 ;-- Am. 2023, Act 198, Imd. Eff. Nov. 7, 2023 ;-- Am. 2024, Act 127, Eff. Apr. 2, 2025
**Constitutionality:** The Michigan Supreme Court held that the failure by the state to prefund retirement health care benefits is in violation of Const 1963, art 9, § 24. However, the Michigan Supreme Court also held that it has no authority to order the governor or legislature to appropriate funds. Musselman v Engler, 448 Mich 503; 533 NW2d 237 (1995).
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1341a Separate contribution rate; unfunded accrued liability; "university reporting unit" defined.

Sec. 41a.

(1) For fiscal years that begin after March 27, 1996, the retirement system shall determine a separate contribution rate for a university reporting unit. Subject to this subsection, the retirement system shall determine the separate contribution rate in the manner prescribed in section 41, except that the unfunded actuarial accrued liability must be amortized over 40 years beginning October 1, 1996 and ending on September 30, 2036, with the payment schedule for universities being based on and applied to the combined payrolls of the universities' employees who are members and who were hired before January 1, 1996 and the universities' employees who would have been members after December 31, 1995, but for the enactment of 1995 PA 272. Beginning with the state fiscal year ending September 30, 2016 and for each subsequent fiscal year, the combined payrolls used for the payment schedule for the university reporting units must include each university reporting unit's combined payroll, as projected by the actuary based on the actuarial valuation for each following fiscal year, except that the combined payroll for each university reporting unit must not be less than the combined payroll projected for each subsequent fiscal year for each university reporting unit by the actuary based on the September 30, 2012 actuarial valuation. The amount of the unfunded accrued liability on which the separate contribution rate is determined must be that amount which a university reporting unit is legally responsible for and is calculated by actuarial analysis. Any reduction in the unfunded liability of the system under governmental action affecting the entire system will be allocated to all reporting units including universities as determined by the system's actuary. For the state fiscal year ending September 30, 2007, the contribution for unfunded actuarial accrued liability must be equal to 4.5% of the unfunded actuarial accrued liability.

(2) As used in this section, "university reporting unit" means a reporting unit that is a university listed in the definition of public school employee under section 6.

**History:** Add. 1995, Act 272, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 2007, Act 15, Imd. Eff. June 6, 2007 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2016, Act 136, Imd. Eff. May 26, 2016
**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:“Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.”Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is

declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1341b Employees as members on or after July 1, 2010 and before February 1, 2018; determination of separate contribution rate for members on or after February 1, 2018; contributions; individuals performing services for entity not participating in retirement system; conditions.

Sec. 41b.

(1) Beginning July 1, 2010, the retirement system may determine a separate employer contribution rate for members who first became members on or after July 1, 2010 and before February 1, 2018. Except as provided in this section, the retirement system shall determine the separate employer contribution rate in the manner prescribed in section 41.

(2) Beginning February 1, 2018, the retirement system shall determine a separate contribution rate for members who first became members on or after February 1, 2018. Except as provided in this section, the retirement system shall determine the separate contribution rate in the manner prescribed in section 41, except that any increase or decrease in the unfunded actuarial accrued liabilities associated with members who first became members on or after February 1, 2018 must be amortized on a 10-year level-dollar schedule with a new contribution rate calculated for each year.

(3) All normal cost and any unfunded actuarial accrued liability contributions as determined under subsection (2) must be paid on a cost-sharing basis of 50% by the employer and 50% by the employee. Except as provided in this section, contributions shall be made in the manner prescribed in section 42. An employee contribution for unfunded actuarial accrued liability must not be assessed to an employee based on any portion of an unfunded liability caused by the failure of an employer to make a required contribution. Following the determination of the cost-sharing basis under this subsection, section 41(2)(c) and (e) applies.

(4) The contributions of a member for unfunded actuarial accrued liability must be treated as picked-up contributions under the internal revenue code, deducted by the employer, and remitted as employer contributions to the general fund of the retirement system and must only be used to finance unfunded actuarial accrued liabilities of the retirement system.

(5) To the extent and upon approval by the Internal Revenue Service, the retirement system for the Tier 1 plan and the plan administrator for the Tier 2 plan may also determine the extent to which some or all of the individuals performing services for an entity not participating in the retirement system that receives any funding from the state school aid fund established in section 11 of article IX of the state constitution of 1963 may participate in the Tier 1 and Tier 2 plans.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Compiler's Notes:** Former MCL 38.1341b, which pertained to payroll contribution rate, basis, and application, was repealed by Act 143 of 1997, Imd. Eff. Nov. 19, 1997.Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1342 Reporting unit contribution; exclusive obligation; contributions picked up by employer; deduction of Social Security contributions; agreement of member; forwarding retirement contributions; report; failure to submit report or contributions; late fee; intentional error or omission; withholding payment of state funds for noncompliance; exception for community or junior college student employee; "intentional" defined.

Sec. 42.

(1) Beginning with the state fiscal year ending September 30, 1995 and subject to section 41b, a reporting unit shall contribute the entire amount determined under section 41 to the reserve for employer contributions and to the reserve for health benefits. The reporting unit contribution under this subsection is the exclusive obligation of the reporting unit payable out of general budget resources of the reporting unit, including funds available under local millage and other local resources and from the state school aid allocation to the reporting unit, and is not a separate

obligation by specific reimbursement or otherwise of this state.

(2) As authorized by resolution or other enabling act of its governing body, the employer shall pick up all contributions of a member made under section 43a for all compensation paid after December 31, 1986 and reported to the retirement system. Although considered contributions of a member for certain purposes under this act, all contributions picked up must be treated as paid by the employer in lieu of contributions by the employee. Contributions picked up as provided in this subsection must be paid from the same source of funds that is used for paying compensation to the member. The employer may pick up these contributions by either a reduction to the member's cash salary, an offset against a future salary increase, or a combination of a reduction in salary and offset against a future salary increase. This subsection does not apply, and the employer shall not deduct, offset, or remit contributions, until the department receives notification from the United States Internal Revenue Service that contributions picked up will not be included as gross income of the member until they are distributed or made available to the member, retirant, retirement allowance beneficiary, or refund beneficiary.

(3) The employer shall deduct from a member's compensation the contributions for Social Security provided in 1951 PA 205, MCL 38.851 to 38.871. Contributions must be made while the member remains a public school employee. Each reporting unit official shall deduct the Social Security contributions from the compensation of each member for each payroll period after the date the employee becomes a member. Social Security contributions must be made notwithstanding that the minimum compensation provided by law is changed. Each member is considered to have agreed to the contributions prescribed in this subsection.

(4) Each reporting unit official shall forward member contributions to the retirement system on a schedule and in a manner determined by the retirement system.

(5) Each reporting unit official shall forward the entire employer contribution required by this act to the retirement system on a schedule and in a manner determined by the retirement system.

(6) Each reporting unit official shall submit to the retirement system a report that includes the information for retirement purposes, including, but not limited to, persons employed, retirants performing services at a reporting unit who are employed by an entity other than the reporting unit or who are independent contractors, wages or amounts paid, hours, and contributions required under this act. The report must include the information on a pay period basis and must be submitted to the retirement system on a schedule and in a manner determined by the retirement system. The superintendent for a reporting unit or the chief administrator for a reporting unit that does not have a superintendent shall complete an annual certification that gives authorization for the employees of the reporting unit to report the information to the retirement system.

(7) If a reporting unit fails to submit a report or contributions, or both, according to the schedule established by the retirement board, the reporting unit shall pay a late fee. If the remittance of contributions is late, the late fee must include interest for each day that the remittance of contributions is late. The retirement board periodically may establish the late fee, which must not be less than $25.00, and interest charges, which must not be less than 6% per annum.

(8) Subject to subsection (9), if a reporting unit fails to correct errors on a report before the errors are discovered by the retirement system or if the errors are intentional, the reporting unit shall pay the late fee and interest charges as described in subsection (7) for each day that the report is in error, unless reasonable cause is shown to the satisfaction of the retirement system.

(9) If the retirement board determines that a reporting unit has committed an intentional error or omission that includes a failure to submit contributions required by this act, the total assessment of daily late fees and daily interest charges under subsection (8) must not exceed the reporting unit's delinquent contribution balance associated with the error or omission, or the reporting unit's employer contribution balance for the previous school fiscal year, whichever is less. Subject to subsection (11), if the retirement board determines that a reporting unit has committed an intentional error or omission that does not include a failure to submit contributions required by this act, the total assessment of daily late fees and daily interest charges under subsection (8) must not exceed 100% of the reporting unit's employer contributions for the previous school fiscal year.

(10) On written notice from the retirement board, the superintendent of public instruction and the state treasurer shall withhold payment of state funds, in part or in whole, payable from the state school aid appropriation or higher education appropriations to a reporting unit that fails to comply with this section.

(11) Errors or omissions relating to the reporting of service rendered by an individual employed by a tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college for a school fiscal year before the 2018-2019 school fiscal year are not subject to the assessment of daily late fees and daily interest penalties under subsection (8) but are subject to the payment of regular late fees and regular interest under subsection (7).

(12) As used in this section, an "intentional" error or omission includes, but is not limited to, the following:

(a) A knowing and willful representation that service was performed if the service was not performed.

(b) A knowing and willful submission of a report that contains material misrepresentations or falsifications, or the knowing and willful failure to submit a required report.

(c) Any other knowing and willful act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this act.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994 ;-- Am. 1996, Act 268, Imd. Eff. June 12, 1996 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017 ;-- Am. 2018, Act 512, Imd. Eff. Dec. 28, 2018

**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

## 38.1342a Community or junior college reporting units; report; office of retirement services; report requirements.

Sec. 42a.

(1) By August 31, 2018, each reporting unit that is a tax supported community or junior college shall submit a report to the office of retirement services with the information necessary for the retirement system to complete the report under subsection (2), as determined by the retirement system.

(2) By September 30, 2018, the office of retirement services shall submit a report to the senate and house of representatives committees on education. The report required under this subsection must include all of the following information, based on information included in the reports submitted to the retirement system under subsection (1), for each reporting unit that is a tax supported community or junior college:

(a) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the number of individuals employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(b) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the amount of reporting unit contributions the tax supported community or junior college contributed under section 42 associated with an individual employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(c) For each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018, the amount of reporting unit contributions the tax supported community or junior college failed to contribute under section 42, if any, associated with an individual employed by the tax supported community or junior college while enrolled as a part-time student in that same tax supported community or junior college.

(3) Subject to sections 43h and 43i, each reporting unit shall make appropriate adjustments and corrections to its reporting and crediting of service to correspond with the information contained in the report under this section, in a time and manner determined by the retirement system.

**History:** Add. 2018, Act 328, Imd. Eff. July 2, 2018 ;-- Am. 2018, Act 512, Imd. Eff. Dec. 28, 2018

**Popular Name:** Act 300

## 38.1343 Percentage paid for participants in optional retirement program.

Sec. 43.

The percentage of aggregate annual compensation to be paid for employees who participate in the optional retirement program under the optional retirement act of 1967, Act No. 156 of the Public Acts of 1967, as amended, being sections 38.381 to 38.388 of the Michigan Compiled Laws, shall be only for the employer's share of social security.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1994, Act 272, Imd. Eff. July 11, 1994

**Popular Name:** Act 300

**38.1343a Contributions of member to member investment plan; deduction and remittance as employer contributions; benefits; amount of contribution; amounts; percentage; member on or before February 1, 2018.**

Sec. 43a.

(1) The contributions of a member who contributes to the member investment plan must be deducted by the employer and remitted as employer contributions to the retirement system pursuant to section 42. A member who contributes to the member investment plan is entitled to the benefits provided in sections 43b and 43c.

(2) Except as otherwise provided in subsection (7), a member who first became a member on or before December 31, 1989 and who elected or elects on or before December 31, 1989 to contribute to the member investment plan shall contribute 3.9% of the member's compensation to the member investment plan.

(3) Except as otherwise provided in subsection (7), a member who first became a member on or before December 31, 1986 but did not perform membership service between December 31, 1986 and January 1, 1990, and who returns to membership service on or after January 1, 1990 and before July 1, 2008, shall make the contributions described in subsection (5).

(4) Except as otherwise provided in subsection (7), a member who first became a member on or after January 1, 1990 and before July 1, 2008 shall make the contributions described in subsection (5).

(5) Except as otherwise provided in subsection (7), a member who first became a member on or after January 1, 1990 and before July 1, 2008 shall contribute the following amounts to the member investment plan:

| Member's annual school fiscal year earned compensation | Amount payable to the member investment plan |
|---|---|
| Not over $5,000.00 | 3% of member's compensation |
| Over $5,000.00 but not over $15,000.00 | $150.00, plus 3.6% of the excess over $5,000.00 |
| Over $15,000.00 | $510.00, plus 4.3% of the excess over $15,000.00 |

(6) Except as otherwise provided in subsection (7), a member who first became a member on or after July 1, 2008 and before February 1, 2018 shall contribute the following amounts to the member investment plan:

| Member's annual school fiscal year earned compensation | Amount payable to the member investment plan |
|---|---|
| Not over $5,000.00 | 3% of member's compensation |
| Over $5,000.00 but not over $15,000.00 | $150.00, plus 3.6% of excess over $5,000.00 |
| Over $15,000.00 | $510.00, plus 6.4% of the excess over $15,000.00 |

(7) Beginning on the transition date, a member described in subsections (2) to (6) who makes the election under section 59(1) and who does not make the attainment date designation under section 59(1) shall contribute the percentage of the member's annual school fiscal year earned compensation to the retirement system as prescribed in section 43g until termination of employment. Beginning on the transition date, a member described in subsections (2) to (6) who makes the election and attainment date designation under section 59(1) shall contribute the percentage of the member's annual school fiscal year earned compensation to the retirement system as prescribed in section 43g until his or her attainment date and shall contribute the percentage of the member's annual school fiscal year earned compensation to the retirement system as prescribed in this section on and after his or her attainment date until termination of employment. Beginning on the transition date, a member described in subsections (2) to (6) who makes or is considered to have made the alternative election under section 59(2)(a) shall continue to contribute the percentage of the member's annual school fiscal year earned compensation to the retirement system as prescribed in this section until termination of employment. Beginning on the transition date, a member described in subsections (2) to (6) who makes the alternative election under section 59(2)(b) shall not contribute any percentage of the member's annual school fiscal year earned compensation to the retirement system under this section or section 43g.

(8) A member who first became a member on or after February 1, 2018 shall contribute his or her normal cost contribution amounts to the member investment plan as described in section 41b(3).

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1990, Act 298, Eff. Mar. 28, 1991 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2007, Act 111, Imd. Eff. Oct. 1, 2007 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1343b Eligibility requirements; exceptions.

Sec. 43b.

A member who contributes to the member investment plan shall have the eligibility requirements of section 81 except as follows:

(a) The age 55 requirement of section 81(1)(a) shall not apply.

(b) The 10 years of credited service requirement of section 81(1)(b) shall be 5 years if the member is working as a public school employee and the member received credited service in each of the 5 school fiscal years immediately preceding the retirement allowance effective date.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1343c Entitlements.

Sec. 43c.

A member other than a member who first became a member on or after July 1, 2010 who contributes to the member investment plan, or the retirement allowance beneficiary of that member, shall be entitled to all of the following:

(a) A 36-month averaging period for the computation of final average compensation, as provided in section 4.

(b) An annual increase in the retirement allowance. The first increase will occur on the first October 1 that is at least 1 full year after the effective date of the retirement allowance. Subsequent annual increases will occur on October 1 of each subsequent year. The amount of the annual increase shall be equal to 3% of the retirement allowance that would be payable as of the date of the increase without application of this subdivision. However, if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected by the member under section 85(1).

(c) The credited service eligibility requirement applicable to the survivor benefits provided in section 89 shall be reduced as follows:

(i) The 15 years of credited service requirement shall be 10 years.

(ii) The 10 years of credited service requirement shall be 5 years.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1998, Act 213, Eff. Mar. 23, 1999 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1343d Repealed. 2012, Act 300, Imd. Eff. Sept. 4, 2012.

**Compiler's Notes:** The repealed section pertained to conditions for election to make contributions to member investment plan.
**Popular Name:** Act 300

### 38.1343e Member before September 4, 2012; contribution of percentage to funding account under public employee retirement health care funding act; "funding account" defined.

Sec. 43e.

Except as otherwise provided in this section or section 91a, each member who first became a member before September 4, 2012 shall contribute 3% of the member's compensation to the appropriate funding account established under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747. Except as otherwise provided in section 91a, beginning in the fiscal year ending September 30, 2026 and each subsequent fiscal year, for each member who first became a member before September 4, 2012, there is no required member contribution under this section. The member contributions under this section must be deducted by the employer and remitted as employer contributions in a manner that the retirement system shall determine. As used in this section, "funding account" means the appropriate irrevocable trust created in the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, for the deposit of funds and the payment of retirement health care benefits.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2024, Act 127, Eff. Apr. 2, 2025
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1343g Contribution beginning on transition date; amount; method of deducting contributions; picking up member contributions for compensation on or after transition date; benefit.

Sec. 43g.

(1) Beginning on the transition date and ending upon the member's termination of employment or attainment date, as applicable under section 59(1), each member who made the election under section 59(1) shall contribute an amount equal to a percentage of his or her compensation to the reserve for employee contributions or to the member investment plan as set forth in subdivision (a) or (b), as applicable, to provide for the amount of retirement allowance that is calculated only on the credited service accrued and compensation for that member on or after the transition date. Subject to subsection (2), the member shall not contribute any amount under this subsection for any years of credited service accrued or compensation before the transition date. Subject to subsection (2), the amount to be contributed under this subsection is as follows:

(a) For a member who does not contribute to the member investment plan as of September 3, 2012, 4% of compensation to the reserve for employee contributions.

(b) For a member who does contribute to the member investment plan as of September 3, 2012, 7% of compensation to the member investment plan.

(2) The retirement system shall determine a method of deducting the contributions provided for in this section from the compensation of each member for each payroll and each payroll period. The contributions under subsection (1) shall not exceed the total normal cost contribution rate.

(3) The employer shall pick up the member contributions required by subsection (1) for all compensation on or after the transition date. Contributions picked up shall be treated as employer contributions in determining tax treatment under the internal revenue code. The employer shall pay these member contributions from the same source of funds that is used in paying compensation to the member.

(4) A member is entitled to the benefit of all contributions made under this section in the same manner as

provided under section 29.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1343h Service credit; enrollment for certain employees of community or junior college reporting unit; requirements; forfeit of claim; assessment and payment of supplemental employer contributions.

Sec. 43h.

(1) An individual who was first employed by a reporting unit that is a tax supported community college or junior college before July 1, 2014, and who did not previously have that service reported by a reporting unit on his or her behalf, may claim and thereafter be credited with the service only if all of the following apply:

(a) The individual is described in section 5(1)(p).

(b) The individual files a written application with the retirement board after January 1, 2019 but not later than 5 p.m. Eastern Standard Time on January 31, 2020 in a method determined by the retirement system. A written application submitted by an individual under this subdivision is irrevocable.

(c) The individual fulfills the terms of any billing statement issued by the retirement system that corresponds with the amount the individual would have contributed according to the schedule governing contributions in effect at the time of that service, plus regular interest on the contributions. The retirement system may determine the time and manner of payment of the total amount under this subdivision.

(2) An individual who satisfies the conditions of subsection (1) must have service credited in an amount commensurate with the contributions remitted under subsection (1) in a time and manner as determined by the retirement system.

(3) An individual described in section 5(1)(p) who was first employed by a reporting unit that is a tax supported community or junior college before July 1, 2014 and who does not satisfy the conditions of subsection (1) shall forfeit any claim to receive credit for that service unless the individual can demonstrate to the satisfaction of the board that a reasonable person in the same circumstance as the individual would not have adequate notice of the application deadline under subsection (1)(b).

(4) Subject to section 43i, the retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college that corresponds with service claimed under subsection (1).

(5) Except as otherwise provided in this subsection, on payment by a reporting unit of the contributions assessed under subsection (4), a reporting unit's financial obligation for service claimed under subsection (1) is considered satisfied in full. If any service is thereafter claimed on the basis of lack of adequate notice under subsection (3), the reporting unit shall pay the contributions assessed in a time and manner as determined by the retirement system.

(6) Notwithstanding any other provision of this act, service otherwise creditable under this section that is not claimed in the manner provided under this section is considered not reportable.

**History:** Add. 2018, Act 512, Imd. Eff. Dec. 28, 2018
**Popular Name:** Act 300

### 38.1343i Determination and assessment of supplemental employer contributions by community or junior college reporting units; payment.

Sec. 43i.

(1) The retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college on the basis of information reported by the reporting unit

under section 42a, and payroll data reported to the retirement system by the reporting unit. The contribution determined and assessed under this section must take into account all of the following:

(a) The extent to which the reporting unit remitted employer contributions and related retirement information for individuals employed by the reporting unit while enrolled as a part-time student in that same reporting unit for each of the 4 school fiscal years preceding the state fiscal year ending September 30, 2018.

(b) The contribution rate must be calculated in the manner provided by section 42.

(2) The retirement system shall determine and assess a supplemental employer contribution for each reporting unit that is a tax supported community or junior college on the basis of service credit claimed under section 43h for the time period and payroll data reported to the retirement system by the reporting unit. In making its determination under this subsection, the retirement system shall take into account all of the following:

(a) The amount and duration of service claimed.

(b) The retirement plan election made by an eligible individual, as applicable.

(3) The contribution rate for service under subsection (2) must be calculated in the manner provided by section 42.

(4) On payment by a reporting unit of the supplemental employer contribution rate assessed under this section, the reporting unit's financial obligation for the service is considered satisfied in full.

**History:** Add. 2018, Act 512, Imd. Eff. Dec. 28, 2018
**Popular Name:** Act 300

### 38.1344 Separation from service; death; unclaimed retirement allowance or other money.

Sec. 44.

Upon the separation from service by a member or upon the death of a member, a former member, a retirant, a retirement allowance beneficiary, or a refund beneficiary, any unclaimed retirement allowance or other money otherwise payable on account of the separation or death shall remain a part of that fund in which it is deposited until claimed by the separated member, retirement allowance beneficiary, or refund beneficiary or the estate or legal representative of a separated member, retirement allowance beneficiary, or refund beneficiary.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1345 Change or error in records; correction; adjustment in benefits.

Sec. 45.

If a change or error in the records of the retirement system results in a retirant, retirement allowance beneficiary, or refund beneficiary receiving from the retirement system more or less than the retirant, retirement allowance beneficiary, or refund beneficiary would have been entitled to receive had the records been correct, the retirement system shall correct the error, and as far as practicable, shall adjust the payment to provide an actuarial equivalent of the benefit to which the retirant, retirement allowance beneficiary, or refund beneficiary was entitled. An adjustment in benefits shall not be made for an error totaling $10.00 or less annually and the amount shall be debited or credited to the reserve for employer contributions.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1346 Benefits; exemption from taxation; subject to taxation beginning January 1, 2012; offset of retirement benefits or refunds; forfeiture of service credit.

Sec. 46.

(1) Except as otherwise provided in this section, a retirement allowance, an optional benefit, or any other benefit accrued or accruing to a person under this act, the reserves created by this act, and the money, investments, or income of those reserves are exempt from state, county, municipal, or other local tax and are subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

(2) Beginning January 1, 2012, a retirement allowance, an optional benefit, or any other benefit accrued or accruing to a person under this act is subject to state tax upon distribution to the person from the various funds created by this act.

(3) The retirement system may offset retirement benefits or refunds payable under this act against amounts owed to the retirement system by a member, retirant, retirement allowance beneficiary, or refund beneficiary.

(4) If the retirement system is required by the federal government pursuant to a court order to transmit a part of a member's contributions standing to the member's credit in the reserve for employee contributions to a federal agency, the service credit that is covered by the payment shall be forfeited in the same manner as if the employee had requested and been paid a refund of the member's most recent contributions.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 40, Imd. Eff. June 13, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1991, Act 47, Imd. Eff. June 27, 1991 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 42, Imd. Eff. May 25, 2011
**Popular Name:** Act 300

**38.1347 Employee of Michigan high school athletic association; entitlement to benefits preserved; limited membership; continued service; eligibility for retirement benefits; election; termination of employment; computation of retirement allowance.**

Sec. 47.

(1) An employee of the Michigan high school athletic association who is a member on December 31, 1987 shall have his or her entitlement to benefits from the retirement system preserved as those benefits exist on December 31, 1987. That employee shall retain a limited membership in the retirement system as provided in this section.

(2) The employee's continued service with the Michigan high school athletic association is service in the retirement system for the purpose of determining the employee's eligibility for retirement benefits that are dependent upon a specified period of total service or upon the attainment of a specified age while in service, or both. Notwithstanding section 81a(1)(c), the employee shall be eligible to retire under section 81a after December 31, 1987, if all the other requirements of that section are met.

(3) The employee shall be eligible to elect to receive his or her retirement allowance under section 85 if all the requirements of that section are met. The employee shall also be eligible to elect the option provided in section 85(1)(b) and nominate a retirement allowance beneficiary as specified in section 85(3) if all the other requirements of section 89 are met. If a Michigan high school athletic association employee has met all age and service requirements for a retirement allowance as of December 31, 1987, the employee is eligible for benefits under section 85 as of December 31, 1987.

(4) If the employee terminates his or her employment with the Michigan high school athletic association with a retirement allowance payable under the retirement system, the computation of the retirement allowance shall be based upon all of the following:

(a) The employee's credited service as of December 31, 1987.

(b) The employee's final average compensation before January 1, 1988, as determined under section 4, or, the average of the employee's annual compensation immediately before January 1, 1988 if the employee's total credited service is less than 5 years.

**History:** Add. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1359 Calculation of retirement allowance; election and attainment date designation; credit for future service accrued and compensation earned; alternative election; method of accepting elections, designations,**

**and alternative elections; member not making or rescinding election or who makes alternative election; reemployed member; definitions.**

Sec. 59.

(1) The retirement system shall permit each qualified member to make an election with the retirement system to continue to receive credit for any future service and compensation on and after the transition date, for purposes of a calculation of a retirement allowance under section 84b. As part of the election under this subsection, the retirement system shall permit the qualified member to make a designation that the contributions prescribed in section 43g shall be paid only until the member's attainment date. A qualified member who makes the election and the attainment date designation under this subsection shall make the contributions prescribed in section 43g only until the member's attainment date and shall make the contributions prescribed in section 43a on and after his or her attainment date. A qualified member who makes the election and the attainment date designation under this subsection shall continue to receive credit for any future service accrued and compensation earned after his or her attainment date for the purpose of the calculation of a retirement allowance under section 84b. A qualified member who makes the election under this subsection and who does not make the attainment date designation or rescinds the attainment date designation under this subsection shall make the contributions prescribed in section 43g until termination of employment. A qualified member who makes the election under this subsection and who does not make the attainment date designation under this subsection shall receive credit for any future service accrued and compensation earned for the purpose of the calculation of a retirement allowance under section 84b.

(2) The retirement system shall permit each qualified member to make an alternative election described in this subsection with the retirement system, if the qualified member does not make the election or the election and designation under subsection (1). A qualified member who does not make the election or the election and designation under subsection (1) and who does not make an alternative election described in this subsection is considered to have made the alternative election described in subdivision (a). A qualified member who does not make the election or the election and designation under subsection (1) shall be permitted to make 1 of the following alternative elections:

(a) To continue to receive credit for any future service and compensation on and after the transition date, for the purpose of the calculation of a retirement allowance under section 84b. A qualified member who makes or is considered to have made the alternative election in this subdivision shall continue to make the employee contributions as provided in section 43a and shall not make the employee contributions described in section 43g.

(b) To freeze all service and compensation to that member as of the day before the transition date for the purpose of the calculation of a retirement allowance under section 84b and, beginning on the transition date, to be eligible for the employer contribution to the member's Tier 2 account as provided in section 84b. Beginning on the transition date, a qualified member who makes the alternative election in this subdivision shall not make the employee contributions described in section 43a or 43g.

(3) The retirement system shall determine a method of accepting qualified member elections, designations, and alternative elections under this section. The retirement system shall accept elections, designations, and alternative elections under this section from qualified members during an election period that begins on September 4, 2012 and ends at 5 p.m. eastern standard time on January 9, 2013. A qualified member may rescind an election, designation, or alternative election before the close of the election period. An election, designation, or alternative election made by a qualified member and not rescinded before the close of the election period shall not be rescinded.

(4) A qualified member who does not make or who rescinds the election under subsection (1) on or before the close of the election period and who makes or is considered to have made the alternative election under subsection (2)(a) is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the day before the transition date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the transition date for purposes of a calculation of a retirement allowance.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited service and compensation allowed under section 84b(1) and (2). This subdivision does not affect an individual's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(5) A qualified member who does not make or who rescinds an election under subsection (1) and who makes the alternative election under subsection (2)(b) on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the day before the transition date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the transition date for purposes of a calculation of a retirement allowance and eligibility for the employer contribution to the member's Tier 2 account.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited

service and compensation allowed under section 84b(3) and (4). This subdivision does not affect an individual's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(6) A qualified member who makes the election and the attainment date designation under subsection (1) and who does not rescind the election and designation on or before the close of the election period under this section is subject to all of the following:

(a) He or she ceases to receive credit for any future service and compensation for purposes of a calculation of a retirement allowance as prescribed in section 84, beginning 12 midnight on the member's attainment date.

(b) He or she becomes subject to section 84b for any future service and compensation on or after 12:01 a.m. on the day after the attainment date if he or she remains employed by an employer.

(c) He or she shall receive a retirement allowance calculated under section 84 that is based only on credited service and compensation allowed under section 84b(5) and (6). This subdivision does not affect a person's right to health insurance coverage provided under section 91 or credit for service provided under section 84b(7).

(7) An individual who is not a qualified member, who was a member before July 1, 2010, who is a deferred member or former nonvested member on September 3, 2012, and who is reemployed on or after September 4, 2012 shall be treated in the same manner as a member described in subsection (4) and shall become subject to section 84b for any future service and compensation.

(8) Any member who is reemployed on or after September 4, 2012 and who, while a member, made an election, designation, or alternative election or is considered to have made an alternative election under this section shall be treated as retaining that election, designation, or alternative election on his or her date of reemployment.

(9) As used in this section:

(a) "Attainment date" means that term as defined in section 84b.

(b) "Qualified member" means a member who meets all of the following requirements:

(i) He or she first became a member before July 1, 2010.

(ii) He or she has earned service credit in the 12 months ending September 3, 2012 or was on an approved professional services or military leave of absence on September 3, 2012.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2012, Act 359, Imd. Eff. Dec. 14, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

Article 4

### 38.1360 Purchase of service credit; 2 years service credit required.

Sec. 60.

Notwithstanding any provision of this act to the contrary, on and after July 1, 2008, a member shall not purchase service credit under this act unless the member has been granted at least 2 years of service credit under section 68.

**History:** Add. 2007, Act 111, Imd. Eff. Oct. 1, 2007
**Popular Name:** Act 300

### 38.1361 Employment of retirant in reporting unit.

Sec. 61.

(1) Except as otherwise provided in this section, if a retirant is receiving a retirement allowance other than a disability allowance payable under this act or under former 1945 PA 136, on account of either age or years of personal service performed, or both, and becomes employed at a reporting unit, the retirant forfeits his or her retirement allowance and the retirement system subsidy for health care benefits from the retirement system for the

entire month of each month in which the retirant is employed at the reporting unit. A retirant who has forfeited the retirement system subsidy for health care benefits under this subsection and who wants to retain health care benefits shall pay the retirant's and retirement system's costs for the health care benefits. The retirement allowance and retirement system subsidy for health care benefits must resume without recalculation on the first of the month following the month in which the retirant has terminated reporting unit employment.

(2) The retirement system may offset retirement benefits payable under this act against amounts owed to the retirement system by a retirant or retirement allowance beneficiary.

(3) Subsection (1) does not apply to a retirant who is employed at a reporting unit if both of the following apply:

(a) The retirant retired after a bona fide termination of employment.

(b) The retirant is employed at any reporting unit on July 25, 2022.

(4) Subsection (1) does not apply to a retirant who is employed by a university that is considered a reporting unit for the limited purpose described in section 7(3).

(5) Subsection (1) does not apply to a retirant who is employed at a reporting unit if both of the following apply:

(a) The retirant retired after a bona fide termination of employment.

(b) The retirant has been retired for at least 9 consecutive months before becoming employed under this subsection.

(6) Until 5 years after the effective date of the amendatory act that added this sentence, subsection (1) does not apply to a retirant who, at the time of the retirant's retirement, was employed in a position other than a superintendent and who is employed at a reporting unit if both of the following apply:

(a) The retirant retired after a bona fide termination of employment.

(b) Either of the following applies:

(i) The retirant has been retired for at least 6 consecutive months.

(ii) The earnings of the retirant do not exceed $15,100.00 in a calendar year.

(7) Until 5 years after the effective date of the amendatory act that added this sentence, subsection (1) does not apply to a retirant who, at the time of the retirant's retirement, was employed as a superintendent and who is employed at a reporting unit if both of the following apply:

(a) The retirant retired after a bona fide termination of employment.

(b) Either of the following applies:

(i) The retirant has been retired for at least 6 consecutive months.

(ii) If the retirant is employed in a position other than a superintendent, the earnings of the retirant do not exceed $15,100.00 in a calendar year.

(8) A retirant is not eligible to use any service or compensation attributable to the employment described in subsection (3), (4), (5), (6), or (7), for a recomputation of his or her retirement allowance.

(9) For purposes of subsections (3), (4), (5), (6), and (7), the retirement system shall determine, in accordance with federal law that governs qualified retirement plans, whether a retirant retired after a bona fide termination of employment. If the retirement system determines that a retirant did not retire after a bona fide termination of employment, the retirement system may adjust the retirant retirement allowance effective date following a bona fide termination.

(10) A reporting unit shall report the employment of a retirant as described in subsection (3) or (4), as applicable, to the retirement system in a manner determined by the retirement system. The reporting unit shall include in the report the name of the retirant, the capacity in which the retirant is employed, and the compensation paid to the retirant. An employer, other than a reporting unit, that employs retirants as described in subsection (3) or (4) shall provide to the reporting unit all information that the reporting unit is required to report to the retirement system under this subsection.

(11) As used in this section:

(a) "Bona fide termination of employment" means, as determined by the retirement system under subsection (9), a retirant has completely severed the employer-employee relationship with his or her reporting unit employer. Completely severing the employer-employee relationship includes, but is not limited to, a retirant not working for his or her reporting unit employer during the month of the retirant's retirement allowance effective date and, before the severing of the employer-employee relationship, the retirant does not intend or expect or have an offer or contingency to become employed at any reporting unit.

(b) "Employed at a reporting unit" means employed directly by a reporting unit as an employee, indirectly by a reporting unit through a contractual arrangement with other parties, or by engagement of a retirant by a reporting unit as an independent contractor.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1999, Act 68, Imd. Eff. June 25, 1999 ;-- Am. 2001, Act 30, Imd. Eff. June 29, 2001 ;-- Am. 2004, Act 5, Imd. Eff. Feb. 20, 2004 ;-- Am. 2006, Act 158, Imd. Eff. May 26, 2006 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 464, Imd. Eff. Dec. 27, 2012 ;-- Am. 2015, Act 219, Imd. Eff. Dec. 16, 2015 ;-- Am. 2018, Act 141, Imd. Eff. May 10, 2018 ;-- Am. 2018, Act 482, Eff. Mar. 29, 2019 ;-- Am. 2020, Act 267, Imd. Eff. Dec. 29, 2020 ;-- Am. 2022, Act 184, Imd. Eff. July 25, 2022 ;-- Am. 2023, Act 147, Imd. Eff. Oct. 10, 2023

**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1361a Report to legislature on number of active employed retirees.

Sec. 61a.

(1) The office of retirement services shall prepare 2 reports regarding retirants employed at reporting units as follows:

(a) For the period that begins on the effective date of the amendatory act that added this section and ends 1 year after the effective date of the amendatory act that added this section, the number of retirants employed at reporting units during that period.

(b) For the period that begins 1 year after the effective date of the amendatory act that added this section and ends 5 years after the effective date of the amendatory act that added this section, the number of retirants employed at reporting units during that period.

(2) For each report required under subsection (1), not later than 1 month after the applicable reporting period, the office of retirement services shall deliver the report to the senate majority leader, the speaker of the house of representatives, the senate and house of representatives appropriations committees, and the senate and house fiscal agencies.

**History:** Add. 2022, Act 185, Imd. Eff. July 25, 2022
**Popular Name:** Act 300

### 38.1362 Purchasing service credit; proof of service; contribution and interest.

Sec. 62.

If a member claims credit for service performed under this act or former Act No. 136 of the Public Acts of 1945, during the period the member was entitled to membership in the retirement system, but the member's employment was not reported to the retirement system and contributions were not remitted for that member, the member may purchase the credit upon presenting acceptable proof of the service and contributing to the retirement system an amount equal to the amount the member would have contributed according to the schedule governing contributions in effect at the time of that service, plus regular interest on the contributions.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.
**Popular Name:** Act 300

### 38.1363 Noncontributory plan; applicability; duty of reporting unit.

Sec. 63.

The noncontributory plan shall apply to each public school employee who is included in the membership of the retirement system. Each reporting unit shall remit the contributions as provided in section 42.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

**38.1364 Purchase of service credit.**

Sec. 64.

(1) If a person described in section 5(1)(d) later becomes a member of this retirement system, service credit shall not be given for employment that is excluded in that subdivision for purposes of determining a retirement allowance.

(2) If a person described in section 5(1)(b) later becomes a member of this retirement system within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment that is excluded in section 5(1)(b) for purposes of determining a retirement allowance upon the payment by the person's employer under the transitional public employment program from funds provided under the former comprehensive employment and training act of 1973, Public Law 93-203, as funds permit, to the retirement system of the contributions, plus regular interest, the employer would have paid had the employment been rendered in a position covered by this act. During the person's employment in the transitional public employment program, the person's employer shall place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions that the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees that the employer determines would transfer from the transitional public employment program into positions covered by this act. If the funds provided under the former comprehensive employment and training act of 1973, Public Law 93-203, are insufficient, the remainder of the employer contributions shall be paid by the person's employer under the transitional public employment program. If a person was not employed by a reporting unit but performed services for that reporting unit under a transitional public employment program and became a member of this retirement system within 12 months after the date of termination as a participant in the transitional public employment program, service credit shall be given for that transitional public employment program service in the manner provided in this subsection. The reporting unit for which the transitional public employment program service was performed is the person's employer under the transitional public employment program for the purposes of this subsection.

(3) Before January 31, 1991, a person excluded from membership as provided by section 5(1)(a) who later becomes a member of this retirement system shall be entitled to purchase service credit for that service, as provided in subsection (6), upon presenting acceptable proof of the service for the excluded period.

(4) Before January 31, 1991, a member of the retirement system with employment excluded from membership service under section 5(1)(c) or under section 23a(1)(c) of chapter I or section 12(2)(c) of chapter II of former Act No. 136 of the Public Acts of 1945 shall be entitled to purchase service credit for that employment, as provided in subsection (6), upon presentation of documentation of the employment rendered that is verified from official reporting unit records or other acceptable documentation as determined by the retirement board. This subsection only applies after June 30, 1987 if the employment being purchased was performed while the person was enrolled as a graduate student at the reporting unit and the employment consisted of 1 or more of the following:

(a) Teaching.

(b) Research.

(c) Academic advising.

(d) Administration.

(e) Library work.

(f) Other employment of an academic or educational nature, as determined by the board.

(5) Before January 31, 1991, a member of the retirement system with out of system public education service or with service described in section 69c(1) that was performed while the person was a full-time student, whether performed before, on, or after October 31, 1980, shall be entitled to purchase service credit for that service, as provided in subsection (6), upon presentation of documentation of the service rendered that is verified from official payroll records or other acceptable documentation as determined by the retirement board pursuant to R 38.1119 of the Michigan administrative code. This subsection only applies after June 30, 1987 if the employment being purchased was performed while the person was enrolled as a graduate student at a public college or public university and the employment consisted of 1 or more of the following:

(a) Teaching.

(b) Research.

(c) Academic advising.

(d) Administration.

(e) Library work.

(f) Other employment of an academic or educational nature, as determined by the board.

(6) Service credit shall not be given under subsection (3), (4), or (5) until the member pays into the retirement system the actuarial cost. Service credit shall not be given under subsection (3), (4), or (5) unless the service being purchased is followed by 5 years of reporting unit service credit under this act or former Act No. 136 of the Public Acts of 1945. Credit provided by subsection (3), (4), or (5) shall not be used in satisfying the minimum of 10 years of service credit required under this act for a retirement allowance.

(7) A person excluded from membership as provided by section 5(1)(f), (g), (h), (i), (j), or (k) shall not receive service credit for the employment described in those subdivisions even if the person subsequently becomes or has been a member of this retirement system.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1983, Act 111, Imd. Eff. July 12, 1983 ;-- Am. 1984, Act 166, Imd. Eff. June 28, 1984 ;-- Am. 1984, Act 428, Imd. Eff. Jan. 2, 1985 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1988, Act 384, Imd. Eff. Dec. 21, 1988 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

## 38.1365 Written application for payment of accumulated contributions; forfeiture of prior service.

Sec. 65.

(1) If a member ceases to be a public school employee before satisfying the age and service requirements for a retirement allowance as provided in section 81(1)(a) or (b) or 43b or if a member elected the optional retirement system under the optional retirement act of 1967, Act No. 156 of the Public Acts of 1967, as amended, being sections 38.381 to 38.388 of the Michigan Compiled Laws, the member upon written application shall be paid, except as otherwise provided in this act, the accumulated contributions standing to the member's credit in the reserve for employee contributions and in the reserve for member investment plan, payable before the expiration of 90 days after submitting the written application for payment on a form provided by the retirement board.

(2) Upon payment of the accumulated contributions standing to the member's credit in the reserve for employee contributions and in the reserve for member investment plan pursuant to subsection (1), the member shall forfeit the prior service and contributory membership service credited to the member, and the noncontributory membership service credited during periods when the member contributed to the member investment plan. However, other membership service acquired under the noncontributory plan shall be nonforfeitable except as provided in section 67. The refund shall be payable notwithstanding any time limit for application contained in former Act No. 184 of the Public Acts of 1937, former Act No. 56 of the Public Acts of 1941, or former Act No. 136 of the Public Acts of 1945.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

## 38.1366 Cessation of membership; forfeiture of service; return to service; reinstatement of previously forfeited service.

Sec. 66.

(1) Except as provided in section 65, if a member ceases to be a public school employee for any reason, except while on official leave from service with the reporting unit, the person shall cease to be a member. The person's credited contributory membership service and credited prior service, and the noncontributory membership service credited during periods when the member contributed to the member investment plan, shall be forfeited and no longer in effect if the person withdraws the accumulated contributions from the retirement system. If the person returns to reporting unit service, the person shall again become a member. If accumulated contributions were withdrawn and the person returns for a period of not less than 1 year of credited service, the person may pay into the retirement system, before the effective date of the person's retirement, the amount withdrawn, together with simple interest on the amount withdrawn from the reserve for employee contributions and compound interest on the amount withdrawn from the reserve for member investment plan computed in each case from the date of withdrawal to the semiannual anniversary of the date of withdrawal following the date of repayment. Upon payment

in full, the member shall be allowed credit for the service upon which the refund was based, which shall reinstate the previously forfeited service. However, a member who previously withdrew the contributions and who separated from reporting unit service for 60 consecutive calendar months shall not be allowed credit for the service upon which the refund was based until the member returns to service for 2 or more years of credited service and returns the accumulated contributions previously withdrawn, together with simple interest on the amount withdrawn from the reserve for employee contributions and compound interest on the amount withdrawn from the reserve for member investment plan computed in each case from the date of withdrawal to the semiannual anniversary of the date of withdrawal following the date of repayment.

(2) Upon a member's retirement or death, the member shall cease to be a member.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1367 Credit for service in another retirement system; withdrawal of accumulated contributions; forfeiture of service or monthly allowance.

Sec. 67.

A member who has met the age and service requirements to receive a retirement allowance from this retirement system as provided in section 81 may withdraw all of the accumulated contributions, if any, if the member is entitled to receive credit for all or part of the service in another retirement system. Withdrawal shall result in the forfeiture of prior service and contributory plan membership service credited to the member upon payment of the refund. A member who has met the age and service requirements to receive a monthly allowance under the noncontributory plan, or combination of contributory and noncontributory plan service, by written waiver and withdrawal of the accumulated contributions, if any, may forfeit a monthly allowance if the member is entitled to receive credit for all or part of his or her service in another retirement system. Once a retirant is in receipt of a retirement allowance from this retirement system, it shall not be forfeited.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

### 38.1368 Service credit; computing terms of service.

Sec. 68.

(1) The retirement board shall grant 1 year of service credit to a member who has been employed and remunerated for services performed for not less than 1,020 hours in a school fiscal year. In determining whether a member is entitled to service credit under this subsection, the retirement system shall calculate service credit using the payroll cycle reported to the retirement system by the employer of the member. If a biweekly payroll cycle is reported, the member shall not accrue more than 60 hours in a payroll cycle. If a semimonthly payroll cycle is reported, the member shall not accrue more than 72 hours in a payroll cycle. If a monthly payroll cycle is reported, the member shall not accrue more than 138 hours in a payroll cycle. If a quarterly payroll cycle is used, the member shall not accrue more than 396 hours in a payroll cycle.

(2) A part-time member or a member employed for a fraction of the school fiscal year shall receive service credit for full-time service on the basis of 60 or more hours per biweekly period and proportionate credit for less than 60 hours on the basis of 60 hours for full-time credit in the proportion which the hours employed in the school fiscal year bears to 1,020 hours.

(3) In computing terms of service, a year shall be a legal fiscal year at the time and place where the service was performed. Not more than 1 year's service shall be counted for retirement purposes in any school fiscal year.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 2003, Act 175, Imd. Eff. Aug. 22, 2003

**38.1369 Out of system public education service; condition for granting membership or prior service credit; requirements; eligibility for retirement allowance; computation of payment; limitation; refund; noncreditable service; member ineligible to initiate service credit purchase.**

Sec. 69.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, as a condition for granting membership or prior service credit under this act for out of system public education service, a member shall meet both of the following requirements:

(a) Pay to the retirement system an amount equal to the amount the member would have contributed under the schedule governing member contributions in effect at the time of that service had the service been performed under this act or former 1945 PA 136, together with regular interest from the end of the school fiscal year in which service was performed to the semiannual anniversary of the date following the payment.

(b) Have 5 years of reporting unit service credit under this act or former 1945 PA 136, following the out of system public education service.

(2) A member is not entitled to a retirement allowance based on out of system public education service that was performed after July 1, 1974, unless the member meets both of the following requirements:

(a) Before September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, initiates a service credit purchase for that service in an amount equal to 5% of the member's full-time or equated full-time compensation earned in the school fiscal year before the school fiscal year in which the application to purchase and payment for the service credit is made, multiplied by the years of that service the member elects to purchase.

(b) That service is followed by 5 years of reporting unit service credit under this act.

(3) For the purposes of computing payment under this section, the compensation amount used must not be less than the highest school fiscal year compensation previously earned by the member. If the compensation amount used for computing payment under this section exceeds the member's final average compensation determined at the time of retirement, the payment required under this section must be recomputed using the member's final average compensation and a refund must be made based on the recomputation. Credit provided by this section must not be used in satisfying the minimum of 10 years of service credit required under this act for a retirement allowance. A person who had employment with a community mental health service program as described in section 6(2) is not subject to the minimum of 10 years of service credit, if the other requirements of this section are met.

(4) A member must not receive more than 15 years of out of system public education service. A member must not receive more out of system public education service than service performed under this act or former 1945 PA 136, unless, before July 1, 1974, the member applied for out of system public education service credit based on payment of contributions for that service credit as required under former 1945 PA 136. The total out of system public education service credited must be used to compute the member's retirement allowance if the minimum service requirements performed under this act or former 1945 PA 136 are met.

(5) If a member who made payment for out of system public education service dies and a retirement allowance beneficiary has not been designated, or if the member withdraws from service before his or her retirement becomes effective, the payment made by the member under this section must be refunded to the member or to the member's refund beneficiary on request.

(6) Out of system public education service is not creditable toward retirement under this act if the member is or will be receiving a retirement allowance for the same service from another retirement system.

(7) Out of system public education service is not creditable under this act unless similar service performed in a reporting unit would be creditable.

(8) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate service credit purchase under this section.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1984, Act 428, Imd. Eff. Jan. 2, 1985 ;-- Am. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

**38.1369a, 38.1369b Repealed. 1989, Act 194, Eff. Jan. 31, 1991.**

**Compiler's Notes:** The repealed sections pertained to purchase of service credit.

**38.1369c Employee in nonpublic elementary or secondary educational institution or nonpublic institution of higher education, employee in foreign country at school for United States personnel or dependents, full-time teacher with job corps, teacher in trust territory, or teacher on Indian reservation; purchase of service credit; request; documentation; payment of amount of actuarial cost; condition to service being credited; satisfaction of minimum service credit for retirement allowance; refund; effect of pension or annuity; member ineligible to initiate service credit purchase; definitions.**

Sec. 69c.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member may elect to purchase service credit for service performed as an employee in a nonpublic elementary or secondary educational institution or a nonpublic 2- or 4-year institution of higher education in this state, in other states of the United States, or in the territorial possessions of the United States on request and presentation of documentation of the employment rendered that is verifiable from official employment or payroll records or other acceptable documentation as determined by the retirement board, and on payment to the retirement system of the actuarial cost.

(2) Before January 31, 1991, a member may elect to purchase service credit for service performed as an employee in a foreign country at a school for United States personnel or dependents of the United States military or United States department of state personnel; service performed as a full-time teacher with the job corps created pursuant to section 422 of part B of title IV of the job training partnership act, Public Law 97-300, service performed as a teacher in a trust territory or former trust territory of the United States; or service performed as a teacher on an Indian reservation in this country; on request and presentation of documentation of the employment rendered that is verifiable from official employment or payroll records or other acceptable documentation as determined by the retirement board, and on payment to the retirement system of the actuarial cost.

(3) Service must not be credited under this section unless the service being purchased is followed by at least 5 years of reporting unit service credit under this act or former 1945 PA 136. Service purchased under this section must not be used to satisfy the minimum of 10 years of service credit required to receive a retirement allowance under this act. The total service credited under subsections (1) and (2) must not exceed 5 years.

(4) If a member who made payment for service under this section dies and a retirement allowance beneficiary has not been designated, or if the member withdraws from service before his or her retirement becomes effective, the payment made by the member must be refunded to the member or to the member's refund beneficiary on request.

(5) Service must not be credited under this section if the member is or will be receiving a pension or annuity for the same service from another retirement system.

(6) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate a service credit purchase under this section.

(7) As used in this section:

(a) "Nonpublic elementary or secondary educational institution" means an institution that offers or provides an organized course of academic study primarily oriented toward the awarding of high school diplomas. Nonpublic elementary or secondary educational institution does not include a proprietary school.

(b) "Nonpublic 2- or 4-year institution of higher education" means an institution that offers an organized course of academic study primarily oriented toward the awarding of associate, baccalaureate, master's, doctoral, or other academic degrees. Nonpublic 2- or 4-year institution of higher education does not include a proprietary school.

(c) "Proprietary school" means a school that uses a certain plan or method to teach a trade, occupation, or vocation for a consideration, reward, or promise. Proprietary school includes, but is not limited to, a private business, trade, or home study school.

**History:** Add. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1988, Act 385, Imd. Eff. Dec. 21, 1988 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

**38.1369d, 38.1369e Repealed. 1989, Act 194, Eff. Jan. 31, 1991.**

**Compiler's Notes:** The repealed sections pertained to purchase of service credit.

### 38.1369f Election to purchase not more than 5 years of service credit less years of service credit purchased under other provisions; request; payment of actuarial cost; prohibited uses of service credit; refund; member ineligible to initiate service credit purchase.

Sec. 69f.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member may elect to purchase not more than 5 years of service credit less the number of years of service credit purchased under sections 6(2)(c), (d), (e), and (f), 64(3), (4), and (5), and 69c(2), or former sections 69a, 69b, 69d, 69e, 74a, 74b, 77, and 78, on request and payment to the retirement system of the actuarial cost.

(2) Service credit purchased under this section must not be used to satisfy the minimum of 10 years of service credit required to receive a retirement allowance under this act.

(3) Service credit purchased under this section must not be used to satisfy the service credit requirement set forth in section 81(1)(a) for a retirement allowance paid before age 46 as provided by section 43b(a).

(4) If a member who made payment for service under this section dies and a retirement allowance is not payable, or if the member withdraws from service and a retirement allowance is not payable, the payment made by the member must be refunded to the member or to the member's refund beneficiary upon request.

(5) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate a service credit purchase under this section.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

### 38.1369g Former employees of reporting unit as public school employees; conditions; remittances required for granting of service credit; definitions.

Sec. 69g.

(1) Subject to subsections (2) and (3), a member whose reporting unit service consists of library or museum service and whose employment with that reporting unit is terminated because that reporting unit becomes a participating municipality to a district library agreement, or a former employee of a reporting unit that becomes a participating municipality to a district library agreement who was a member as the result of former employment with that reporting unit, is a public school employee for purposes of this act if both of the following conditions are met:

(a) The person subsequently is employed by the district library established pursuant to that district library agreement.

(b) The district library board of that district library adopts a resolution that provides that the district library will remit to the retirement system the amount, percentages, and contributions described in subsection (2) for that person.

(2) The retirement board shall grant service credit to a member described in subsection (1) only if the district library remits to the retirement system the amount required by section 42, the percentage of aggregate annual compensation determined for current service as required by section 41, and the percentage determined for unfunded accrued service as required by section 41.

(3) The remittances described in subsection (2) are the exclusive obligation of the district library and shall not be a separate obligation by specific reimbursement or otherwise of the state.

(4) As used in this section:

(a) "District library" means a library established pursuant to section 3 of the district library establishment act, Act No. 24 of the Public Acts of 1989, being section 397.173 of the Michigan Compiled Laws.

(b) "District library agreement" means that term as used in the district library establishment act, Act No. 24 of the Public Acts of 1989, being sections 397.171 to 397.196 of the Michigan Compiled Laws.

(c) "District library board" means that term as used in the district library establishment act, Act No. 24 of the Public Acts of 1989.

(d) "Participating municipalities" means that term as used in the district library establishment act, Act No. 24 of the Public Acts of 1989.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1370 State of Michigan service; condition for granting membership or prior service credit; requirements; petition for transfer of service credit, accumulated contributions, and interest; refund; member ineligible to initiate service credit purchase.**

Sec. 70.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, as a condition for granting membership or prior service credit under this act for state of Michigan service, a member shall meet both of the following requirements:

(a) Pay to the retirement system an amount equal to the amount the member would have contributed under the contributory plan for service performed before July 1, 1977 under the schedule governing member contributions in effect at the time of that service had the service been performed under this act or former 1945 PA 136, together with regular interest from the end of the school fiscal year in which the service was performed to the semiannual anniversary of the date following payment.

(b) Relinquish all rights to retirement under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69. Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is entitled to receive benefits under sections 43b and 43c for service performed on or after January 1, 1987 if the member pays the difference between the actuarial equivalent of the benefits provided by sections 43b and 43c and by the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(2) Credit for service performed as a state employee under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, must be on the same basis for eligibility in all respects for any form of retirement provided in this act as if the service were performed in a reporting unit under this act.

(3) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a former member who on or before July 1, 1974, was employed in the state classified or unclassified service, whose membership was transferred to the state employees' retirement system under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, and who again became a member of the retirement system created under former 1945 PA 136 or becomes a member of the retirement system created under this act, is entitled to petition the retirement system in writing for a transfer of the member's accumulated contributions, including interest, and service standing to the member's credit with the state employees' retirement system to this retirement system. On receipt of the member's petition, service standing to the member's credit, accumulated contributions, and interest must be transferred from the employee's savings fund created under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, to the reserve for employee contributions of this retirement system. An individual whose membership service and accumulated contributions are transferred back to this retirement system immediately shall have the transferred service credit recognized by the retirement system on the same basis as if the individual continuously had been a member of the retirement system.

(4) If a member who made payment for state of Michigan service dies and a retirement allowance beneficiary has not been designated, or withdraws from service before his or her retirement becomes effective, the payment made by the member must be refunded to the member or to the member's refund beneficiary on request.

(5) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate a service credit purchase under this section.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

**38.1371 Sabbatical leave; employee organization professional services leave or released time; member ineligible to initiate service credit purchase.**

Sec. 71.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, the retirement board shall grant service credit for the time a member is on a sabbatical leave authorized by a reporting unit, if the member returns to regular employment with the same reporting unit and acquires 1 year or more of subsequent service credit with that same reporting unit and if the member acquired 5 or more years of credited service with the reporting unit immediately before the sabbatical leave.

(2) If the sabbatical leave described in subsection (1) is granted before July 1, 1981, the reporting unit, if the reporting unit had a noncontributory plan at the time the sabbatical leave is granted, or the member, if the reporting unit has a contributory plan at the time the sabbatical leave is granted, shall pay to the system for each year of sabbatical leave credit an amount equal to 5% of the member's compensation earned in the school fiscal year immediately before the school fiscal year in which the sabbatical leave is granted, together with regular interest from the end of the school fiscal year in which the sabbatical leave was or is granted to the earlier of the following dates following the date of payment, the first day of the school fiscal year beginning after the date of payment or the first day of the seventh month of the school fiscal year in which the payment is made. If the reporting unit makes the payment required by this subsection, the reporting unit also shall pay the required interest. If the member makes the payment required by this subsection, the member also shall pay the required interest.

(3) If the sabbatical leave described in subsection (1) is granted after June 30, 1981, the member shall pay an amount equal to 5% of the member's full-time or equated full-time compensation earned in the school fiscal year immediately before the school fiscal year in which payment is made for each year of service credit the member elects to purchase. In computing payment under this subsection, the compensation amount used, except as otherwise provided in this subsection, must not be less than the highest school fiscal year compensation the member earned from the reporting unit that granted the sabbatical leave. If the compensation amount used for computing payment under this subsection exceeds the member's final average compensation determined at the time of retirement, the payment required under this subsection must be recomputed using the member's final average compensation and a refund must be made based on the recomputation.

(4) If, before October 31, 1980, either the reporting unit or the member has contributed 5% of the member's compensation for the school fiscal year in which the sabbatical leave was granted in order to purchase service credit for that sabbatical leave, a further payment for the purchase of service credit for that sabbatical leave shall not be required. If a member has paid the amount required under subsection (2) for the purchase of service credit for sabbatical leave, but later receives a refund of that amount, the member, not the reporting unit, shall repay the amount with regular interest as required by subsection (2) if the member elects to purchase service credit for the sabbatical leave.

(5) Effective October 1, 1981, the retirement board shall grant service credit for the time a member is on either an employee organization professional services leave or employee organization professional services released time authorized by a reporting unit if all of the following conditions are satisfied, as applicable:

(a) For a member who is on either a professional services leave or professional services released time that first began before October 1, 1996, which leave or released time is renewed annually by the reporting unit, the member is included on the reporting unit's reports required by section 42(6) and compensation, service, contribution, and other requirements are reported on the same basis as for those members of the reporting unit who were not granted an employee organization professional services leave or employee organization professional services released time.

(b) For a member who is on either a professional services leave or professional services released time, which leave or released time does not meet the requirements of subdivision (a), the member is included on the reporting unit's reports in the manner required by subdivision (a), except that compensation is reported at the rate of compensation paid to the member by the reporting unit immediately preceding the date the member commenced the professional services leave or professional services released time along with the normal and customary compensation increases that would have been paid to the member by the reporting unit had the member remained in the same position held at the reporting unit immediately preceding the date the member commenced the leave or released time. However, if the member was not working a full 12-month period for the reporting unit immediately preceding the date the member commenced the professional services leave or professional services released time and is working a full 12-month period for the public school employee organization, the rate of compensation paid to the member by the reporting unit immediately preceding the date the member commenced the leave or released time may be increased proportionately to reflect the additional time worked for the public school employee organization. That adjusted compensation, along with the normal and customary compensation increases otherwise allowed in this subdivision, must then be reported as required in this subdivision.

(c) For a member who is on either a professional services leave or professional services released time that first began before October 1, 1996, which leave or released time is renewed annually by the reporting unit, the reporting unit remits the amount required by section 42 and the percentage of aggregate annual compensation provided from the state school aid fund for current service, if any, the percentage determined for unfunded accrued service as required by section 41, and the employer's share of social security contributions if the reporting unit is responsible for remitting the employee's share of social security contributions.

(d) For a member who is on either a professional services leave or professional services released time, which professional services leave or professional services released time does not meet the requirements of subdivision (c), the reporting unit remits the amounts required by subdivision (c) based on the rate of compensation paid to the member by the reporting unit immediately preceding the date the member commenced the professional services leave or professional services released time along with the normal and customary compensation increases that would have been paid to the member by the reporting unit had the member remained in the same position held at the reporting unit immediately preceding the date the member commenced the leave or released time. However, if the member was not working a full 12-month period for the reporting unit immediately preceding the date the member commenced the professional services leave or professional services released time and is working a full 12-month period for the public school employee organization, the rate of compensation paid to the member by the reporting unit immediately preceding the date the member commenced the leave or released time may be increased proportionately to reflect the additional time worked for the public school employee organization. That adjusted compensation, along with the normal and customary compensation increases otherwise allowed in this subdivision, must then be reported as required in this subdivision.

(6) The reporting unit must be reimbursed those sums paid to the retirement board under subsection (5) by the member or the public school employee organization on a current basis. A member who has credited service as an employee of a school district of the first class, as described in part 6 of the revised school code, 1976 PA 451, MCL 380.401 to 380.485, for a leave of absence effective before October 1, 1981, shall continue to receive credit based on the law of this state in effect at the time the leave of absence was initially effective.

(7) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate a service credit purchase under subsections (1) and (3).

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1982, Act 197, Imd. Eff. July 1, 1982 ;-- Am. 1987, Act 242, Imd. Eff. Dec. 28, 1987 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1996, Act 268, Imd. Eff. June 12, 1996 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

### 38.1372 Repealed. 1989, Act 194, Imd. Eff. Aug. 25, 1989.

**Compiler's Notes:** The repealed section pertained to return to service on termination of statutory period for payment of duty disability retirement allowance.
**Popular Name:** Act 300

### 38.1373 Resumption of employment following honorable discharge or release from active duty with armed forces; service credit; limitation; accumulation of contributions to reserve for employee contributions at regular interest.

Sec. 73.

A member of this retirement system who enters active duty with the armed forces and within 24 months after the date of the member's honorable discharge or release from active duty from the armed forces resumes employment as a public school employee under this act, former Act No. 136 of the Public Acts of 1945, former Act No. 56 of the Public Acts of 1941, or former Act No. 184 of the Public Acts of 1937, shall receive not more than 6 years of service credit, except required service extending beyond 6 years, for time spent in the armed forces credited to the member as a member of the retirement system. Credit also shall be given to a member who meets the requirements of this section for active duty service which the member rendered before becoming a member, if the member pays to the retirement system an amount determined pursuant to section 74 for the years of service rendered before becoming a member which are to be credited. The total service credited under this section shall not exceed 6 years. Service shall not be credited if it is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction shall not apply to a person who has acquired or will acquire retirement eligibility under the federal government for services in the reserve. During the period of the service of a member, contributions to the reserve for employee contributions standing to the member's credit as of the last payroll date preceding military service shall be accumulated at regular interest.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1374 Service credit for member not meeting requirements of MCL 38.1373; election; computation of payment; restriction; condition.

Sec. 74.

(1) A member of this retirement system after May 31, 1976, who does not meet the requirements of section 73, and who enters active duty with the armed forces, may elect to receive service credit for not more than 5 years of active duty upon request and payment to the retirement system of an amount equal to 5% of the member's full-time or equated full-time compensation earned in the school fiscal year immediately before the school fiscal year in which payment is made multiplied by the years of service that the member elects to purchase up to the maximum.

(2) For the purposes of computing payment under this section, the compensation amount used shall not be less than the highest school fiscal year compensation previously earned by a member. If the compensation amount used for computing payment under this section exceeds the member's final average compensation determined at the time of retirement, the payment required under this section shall be recomputed using the member's final average compensation and a refund shall be made based upon the recomputation.

(3) Service shall not be credited if it is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction shall not apply to a person who has acquired or will acquire retirement eligibility under the federal government for service in the reserve.

(4) Service shall not be credited under this section until the member has accumulated 10 years of full-time or equated full-time service credit performed under this act or former acts.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1374a, 38.1374b Repealed. 1989, Act 194, Eff. Jan. 31, 1991.

**Compiler's Notes:** The repealed sections pertained to purchase of service credit.
**Popular Name:** Act 300

### 38.1375 Separation from service or reduction of hours for purposes of parental leave; purchase of service credit; refund; application; member ineligible to initiate service credit purchase; "parental leave" defined.

Sec. 75.

(1) Until September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member who left or leaves service as a public school employee; who left or leaves out-of-system public education service; or a member of the state employees' retirement system under section 13 of the state employees' retirement act, 1943 PA 240, MCL 38.13, who left or leaves service as a state employee for purposes of parental leave who subsequently becomes a member of this retirement system without other intervening employment of more than 20 hours per week for each week for which service credit was claimed may purchase service credit for the time period or periods during which the person was separated from service because of parental leave if the member satisfies the requirements of this section. The member shall submit an application as described in subsection (5) and shall pay the actuarial cost to the retirement system. The total service credited under this section must not exceed 5 years. A member requesting purchase of service credit under this section shall certify to the retirement system the purpose for which the member took leave or was separated from service as a public school employee; a person performing out-of-system public education service; or a member of the state employees' retirement system under section 13 of the state employees' retirement act, 1943 PA 240, MCL 38.13.

(2) Service credit purchased under this section must not be used to satisfy the minimum of 10 years of service credit required to receive a retirement allowance under this act.

(3) If a member who made payment under this section dies and a retirement allowance beneficiary has not been designated, or if the member leaves reporting unit service before his or her retirement becomes effective, the payment made by the member must be refunded on request to the member or to the member's refund beneficiary.

(4) A member who reduces hours of employment with a reporting unit for purposes of parental leave or a person who reduces hours of out of system public education service for purposes of parental leave and who subsequently becomes a member of the retirement system may purchase service credit for those hours by which employment was reduced if all other requirements of this section are met.

(5) A member requesting purchase of service credit under this section shall submit an application as prescribed by the retirement system in which the member shall certify the time period claimed for parental leave and the purpose of the parental leave. If the request for purchase of service credit under this section is a result of leave taken to care for the member's child by birth or adoption, the member also shall submit a certified copy of a birth certificate or adoption document from the appropriate court of jurisdiction.

(6) Parental leave is creditable under this act until the child, by birth or adoption, attains age 18 or is married, whichever occurs first.

(7) After September 29, 2017 at 5 p.m. Eastern Daylight Saving Time, a member is not eligible to initiate a service credit purchase under this section.

(8) As used in this section, "parental leave" means either of the following:

(a) The presence of the member in the active participation or supervision in the day-to-day, ongoing care or maintenance of his or her child by birth or adoption, for which the member reduced or eliminated the number of hours worked for this state, in out-of-system public education service, or for the reporting unit in a normal work time period.

(b) A member's pregnancy that occurred while a member, whether brought to full term or not, childbirth, and recuperation, for which the member reduced or eliminated the number of hours worked for this state, in out-of-system public education service, or for the reporting unit in a normal work time period.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2006, Act 617, Eff. Jan. 1, 2009 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

### 38.1376 Partial purchase of service credit.

Sec. 76.

On and after the effective date of this section, a member who is otherwise entitled to purchase service credit for active duty in the armed forces under section 73 or 74, or for maternity or paternity or child rearing under section 75, may purchase such service credit in separate increments equal to 1 or more full years, or a remaining fraction of a year, if any, or both. Partial purchase of service credit under this section shall not bar future such purchases otherwise in compliance with this section and sections 73, 74, and 75, but computation of the amount of payment due shall be made separately for each purchase.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985
**Popular Name:** Act 300

### 38.1377, 38.1378 Repealed. 1989, Act 194, Eff. Jan. 31, 1991.

**Compiler's Notes:** The repealed sections pertained to purchase of service credit.
**Popular Name:** Act 300

**38.1379 Actuarial cost; recomputation.**

Sec. 79.

(1) Actuarial cost shall be equal to the product of subdivisions (a), (b), and (c):

(a) A percentage, determined by the retirement board and the department, which when multiplied by a member's compensation, as determined under subdivision (b), results in the average actuarial present value of the additional benefits resulting from the crediting of 1 additional year of service. The percentage may vary because of age, credited service, or benefit coverage. An increase or decrease in the percentage under this subdivision shall not become effective before the expiration of 6 months or more after the retirement board notifies the reporting units of the increase or decrease.

(b) A member's compensation. The member's compensation shall be the member's full-time or equated full-time compensation earned in the school fiscal year immediately before the school fiscal year in which the application to purchase and payment for the service are made. The compensation amount used shall not be less than the highest compensation previously earned by the member.

(c) The number of years, including any fraction of a year, of credited service a member elects to purchase up to the maximum allowed.

(2) If the compensation amount used for computing payment under this section exceeds the member's final average compensation determined at the time of retirement, the payment required under this section shall be recomputed using the member's final average compensation and a refund shall be made based upon the recomputation.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1379a Recomputation of payment for purchase of service; refund.**

Sec. 79a.

(1) Subject to subsection (2), if the compensation amount used for computing payment for a purchase of service credit under section 64, 69, 69c, 69d, 69e, 71, 74, 74a, 74b, 75, 77, or 78 before the effective date of the amendatory act that added this section exceeded the full-time or equated full-time compensation earned in the school fiscal year used in that computation, the payment for that purchase shall be recomputed using the greater of either the full-time or equated full-time compensation amount earned for the school fiscal year in which payment was made, or the highest school fiscal year compensation previously earned by the member. A refund shall be made based upon the recomputation.

(2) A refund pursuant to this section shall be made only to a member, deferred member, or retirant who makes written application to the retirement board in a form determined by the board.

**History:** Add. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1379b "Initiate a service credit purchase" defined.**

Sec. 79b.

As used in this article, "initiate a service credit purchase" means to complete payment or to enter into a tax-deferred payment arrangement in a form and manner prescribed by the retirement system.

**History:** Add. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

### 38.1381 Retirement allowance under MCL 38.1384; application; eligibility requirements.

Sec. 81.

(1) Except as provided in section 81c, a member who no longer is working as a public school employee or in any other capacity for which service credit performed in this state is allowed under this act, upon the member's written application to the retirement system, shall be entitled to a retirement allowance provided for in section 84 if 1 of the following applies:

(a) The member is 55 years of age or older and has 30 or more years of credited service as provided under this act of which at least 15 years were served as a public school employee.

(b) The member is 60 years of age or older and has accumulated 10 or more years of credited service as a public school employee.

(c) The member is 55 years of age or older and has 15 or more years of credited service, but less than 30 years of credited service of which the last 5 consecutive years are immediately preceding the member's retirement allowance effective date.

(2) Except as provided in section 81c, for a member who contributes to the member investment plan, the eligibility requirements of subsection (1) shall be modified as provided in section 43b.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1381a Retirement allowance computed according to MCL 38.1384(1); reduction inapplicable; definitions.

Sec. 81a.

(1) Notwithstanding section 81, a member may retire with a retirement allowance computed according to section 84(1) if all of the following apply:

(a) The member files a written application with the retirement board within the early retirement effective period requesting a retirement allowance effective date that is on or before July 1, 1989.

(b) On the last day of the month immediately preceding the retirement allowance effective date stated in the application or the last day of the early retirement effective period, whichever occurs earlier, the member's combined age and length of credited service is equal to or greater than 80 years and the member has 10 or more years of credited service.

(c) The member was working as a public school employee immediately preceding the retirement allowance effective date.

(2) The reduction provided for in section 84(2) shall not apply to a person who retires pursuant to this section.

(3) For purposes of this section, "early retirement effective period" means the period beginning on January 1, 1986 and ending at midnight on January 1, 1989.

**History:** Add. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1988, Act 212, Imd. Eff. June 30, 1988 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1381b Retirement; eligibility requirements; computation; extension; "incentivized retirement application period" defined; amortization of additional costs.

Sec. 81b.

(1) Notwithstanding section 81, a member may retire with a retirement allowance computed according to this section if all of the following apply:

(a) The member files a written application with the retirement board within the incentivized retirement application period stating a retirement allowance effective date that is on or after July 1, 2010 but not later than September 1, 2010. A member may withdraw a written application submitted by a member on or before June 11, 2010. A written application submitted by a member and not withdrawn on or before June 11, 2010 is irrevocable.

(b) On the last day of the month immediately preceding the retirement allowance effective date stated in the application, the member's combined age and length of credited service is equal to or greater than 80 years or the member is eligible to retire under section 81 with a retirement allowance that is not subject to reduction under section 84(2).

(c) The member was employed as a public school employee for the 6-month period ending May 1, 2010. A member who has worked in the 6-month period ending May 1, 2010 and is on layoff or on an approved leave of absence status from reporting unit employment is considered to have met the employment requirement of this subdivision.

(2) Upon his or her retirement as provided in this section, a member who retires with a retirement effective date on or before September 1, 2010 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.6% of the member's final average compensation if the final average compensation is $90,000.00 or less and the member is eligible to retire under section 81 with a retirement allowance that is not subject to reduction under section 84(2). If the member is eligible to retire under section 81 with a retirement allowance that is not subject to reduction under section 84(2) and has a final average compensation that is greater than $90,000.00, the retirement allowance shall be equal to the member's number of years and fraction of a year of credited service multiplied by 1.6% of his or her final average compensation up to a final average compensation of $90,000.00 and the remaining portion of the retirement allowance shall be equal to the member's number of years and fraction of a year of credited service multiplied by 1.5% of the portion of final average compensation over $90,000.00. For members eligible under this section because the member's combined age and length of credited service is equal to or greater than 80 years, upon his or her retirement as provided in this section, a member who retires with a retirement effective date on or before September 1, 2010 shall receive a retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.55% of the member's final average compensation if the final average compensation is $90,000.00 or less. For members eligible to retire under this section because the member's combined age and length of credited service is equal to or greater than 80 years whose final average compensation is greater than $90,000.00, the retirement allowance shall be calculated so that the member receives a portion of his or her retirement allowance equal to the member's number of years and fraction of a year of credited service multiplied by 1.55% of his or her final average compensation up to a final average compensation of $90,000.00 and the remaining portion of the retirement allowance shall be calculated as equal to the member's number of years and fraction of a year of credited service multiplied by 1.5% of the portion of final average compensation over $90,000.00.

(3) Except as otherwise provided in this subsection, the superintendent for a reporting unit or the chief administrator for a reporting unit that does not have a superintendent may extend the effective date of retirement under subsection (1) of a member employed by that reporting unit to a date not later than September 1, 2011. Each reporting unit having a member who elects to retire under this section may extend the retirement effective date of 1 member under this section. Up to an additional 2,500 extensions shall be allotted to reporting units using a pro-rata methodology determined by the retirement system. The retirement system shall notify reporting units of any additional extension allotments by May 22, 2010. To make an extension under this subsection, the superintendent or chief administrator shall submit to the retirement system notification of members whose retirement dates the superintendent or chief administrator will extend along with the written concurrence of the member on or before June 15, 2010. The superintendent or chief administrator shall not request, and the retirement system shall not implement, the extension of a member that exceeds the number of extensions allotted to his or her reporting unit.

(4) For purposes of this section, "incentivized retirement application period" means the period beginning on May 19, 2010 and ending on June 11, 2010.

(5) Any additional costs to the retirement system as a result of the retirement allowance calculations under this section shall be amortized over a 10-year period.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012

**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

### 38.1381c Member 60 years of age or older with 10 or more years of service; increase in regular retirement age; adjustment by retirement board; "regular retirement age" defined.

Sec. 81c.

(1) A member who first becomes a member on or after July 1, 2010 who no longer is working as a public school employee or in any other capacity for which service credit performed in this state is allowed under this act, on the member's written application to the retirement system, is entitled to a retirement allowance provided for in section 84(1) if the member is 60 years of age or older and has accumulated 10 or more years of credited service pursuant to section 68 as a public school employee and has reached regular retirement age.

(2) The eligibility requirements of subsection (1) must not be modified as provided in section 43b.

(3) The reduction provided for in section 84(2) does not apply to an individual who retires under this section.

(4) Notwithstanding any other provision of this act, a member who first becomes a member on or after July 1, 2010 shall not purchase or transfer service credit under article 4 and shall not have any purchased or transferred service credit included in the calculation of a retirement allowance on retirement.

(5) Beginning October 1, 2019 and for each fiscal year in which an experience investigation study is completed under section 41(16), if the most recent experience investigation study of mortality of the retirement system using a 65-year-old based on a 50-50 male-female blend shows an increase of 1 or more years from the previous experience investigation study of mortality, the retirement board, in consultation with the actuary and the department, shall increase the regular retirement age by at least 1 year up to the total increase in whole-year increments unless the most recent actuarial funded ratio for the benefits funded under section 41b(3) is greater than 100% after accounting for an increase in mortality as reflected in the experience investigation study. Any adjustment to the regular retirement age by the retirement board must take place within 12 months after the retirement board's adoption of the most recent experience investigation study on an effective date as determined by the retirement board. Any required increase to the regular retirement age under this subsection must take into account the cumulative increase in mortality relative to the experience investigation study covering the period 2012 through 2017, less any actual increase already taken into account in a previous increase to the regular retirement age. An adjustment to the regular retirement age under this subsection does not apply to a member who, on the effective date of the increase, is within 5 years of the then current regular retirement age. The retirement board may additionally exclude members who, on the effective date of the increase, are within between 5 and 8 years of the then current regular retirement age.

(6) As used in this section, "regular retirement age" means the following:

(a) For a member who first becomes a member on or after July 1, 2010 and before February 1, 2018, 60 years of age and is not subject to increase as provided under subsection (5).

(b) Subject to subsection (5), for a member who first becomes a member on or after February 1, 2018, 60 years of age.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1381d Employment retirement system; election to participate in Tier 2; method of accepting elections; election period; member not making election considered as member of Tier 1; collection of employer and employee contributions; qualified participant considered as participant in Tier 2; definitions.

Sec. 81d.

(1) Except as provided in subsection (8), the retirement system shall permit each qualified participant who first becomes a qualified participant and first works for a reporting unit after September 3, 2012 to make an election to not become a member of Tier 1 and become only a qualified participant in Tier 2.

(2) The retirement system shall determine a method of accepting elections under subsection (1) and reporting

units shall secure those elections during the period beginning on the date of the individual's employment and ending on the expiration of 75 days from the individual's first payroll date. An election under subsection (1) is irrevocable. The retirement system shall provide a form on which each qualified participant who first becomes a qualified participant and first works for a reporting unit after January 31, 2018 and before July 1, 2024 may make an election under subsection (1). The form described in this subsection must be accompanied by a description of the benefit options. The form must include an acknowledgment that the qualified participant has received the description of the benefit options.

(3) A qualified participant who first becomes a qualified participant and first works for a reporting unit after September 3, 2012 and before February 1, 2018 who does not make an election under subsection (1) for any reason on or before the close of the election period is considered to have made an election to become a member of Tier 1 and is subject to all of the following as of the date of his or her employment:

(a) The qualified participant is eligible to accrue any service credit or qualify for any retirement allowance under Tier 1 under the terms as provided in section 81c.

(b) The qualified participant is also a qualified participant under Tier 2.

(4) A qualified participant who first becomes a qualified participant and first works for a reporting unit after January 31, 2018 and before July 1, 2024 who does not make an election for any reason on or before the close of the election period is considered to have made an election to become only a qualified participant in Tier 2.

(5) An individual who makes the election under subsection (1) on or before the close of the election period or is a qualified participant described in subsection (4) is considered to have made an election to not become a member of Tier 1 and is subject to all of the following as of the date of his or her employment:

(a) The individual is not eligible to accrue any service credit or qualify for any retirement allowance under Tier 1 under the terms as provided in section 81c.

(b) The individual is only a qualified participant under Tier 2.

(6) A qualified participant who first becomes a qualified participant and first works for a reporting unit after June 30, 2024 who does not make an election under subsection (1) for any reason on or before the close of the election period is considered to have made an election to become a member of Tier 1 and is subject to all of the following as of the date of the qualified participant's employment:

(a) The qualified participant is eligible to accrue any service credit or qualify for any retirement allowance under Tier 1 under the terms as provided in section 81c.

(b) The qualified participant is also a qualified participant under Tier 2.

(7) The retirement system shall collect from an individual described in subsection (1) all amounts required under sections 43a and 131(2) and shall collect all required employer contributions required under Tier 1 from the individual's date of employment. If an individual makes a valid election under subsection (1) to not become a member of Tier 1 or is a qualified participant under subsection (4), the retirement system shall determine and implement a method to reconcile employer and employee contributions to be deposited to Tier 2, and any such employee contributions will be considered to be elective contributions under section 131.

(8) A qualified participant who first becomes a qualified participant and first works for a reporting unit following the effective date of the qualifying event is only a Tier 2 qualified participant and is considered to have made an election to become only a qualified participant in Tier 2. As used in this subsection:

(a) "Effective date of the qualifying event" means 12 months after the date that the retirement board receives the valuation report showing that the qualifying event has occurred.

(b) "Qualifying event" means the date on which the actuarial funded ratio for the plan for which the separate contribution rate is calculated under section 41b(2) falls below 85% for 2 consecutive years, based on the actuarial funded ratio using 5-year smoothing of investment returns. For purposes of valuation under this subdivision, the qualifying event does not occur if either of the following applies:

(i) The actuarial funded ratio falls below 85% but would not have fallen below 85% but for the failure of the employer or this state to make a required contribution as calculated under section 41b.

(ii) This state makes an appropriation to the plan described under this subdivision that increases the valuation as described under this subsection to 85% or higher.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017 ;-- Am. 2023, Act 250, Eff. Feb. 13, 2024

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

**38.1382 Deferred vested service retirement allowance; entitlement; computation; application; forfeiture; payment of option to beneficiary.**

Sec. 82.

(1) A member who terminates reporting unit service before 60 years of age for a reason other than the member's retirement or death, who does not withdraw accumulated contributions standing to the member's credit in the reserve for employee contributions and the reserve for member investment plan, and who has or maintains in effect 10 or more years of credited service shall be entitled to a deferred vested service retirement allowance computed pursuant to section 84 based upon the last year of credited service of the member's final average compensation period. Upon or after 60 years of age, entitlement of the member's deferred vested service retirement allowance shall begin the first day of the calendar month next following the deferred member's written application filed with the retirement board on forms furnished by the board. The deferred member's entitlement to a deferred vested service retirement allowance based on prior service or contributory membership service, or both, shall be forfeited if the deferred member withdraws from the retirement system the member's accumulated contributions unless the service is reinstated as provided in section 66. A member who meets all of the qualifications of this subsection, has 30 or more years of credited service, and leaves service before the member's fifty-fifth birthday for a reason other than retirement or death shall be entitled to a deferred vested service retirement allowance at 55 years of age.

(2) If a member, before terminating reporting unit services, selects the option provided in section 85(1)(b), but dies before the effective date of the member's deferred vested service retirement allowance, the option provided in section 85(1)(b) and selected by the deferred member shall be paid to the retirement allowance beneficiary, at the time the deceased deferred member would have otherwise been eligible to begin receiving the deferred vested service retirement allowance.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1383 Date of retirement allowance; payment on cessation of eligibility for continuation of benefits.**

Sec. 83.

(1) Each retirement allowance shall date from the first of the month following the month in which the applicant satisfies the age and service requirements of this act and terminated reporting unit service, but not more than 12 months before the month in which the application was filed with the retirement system, if the applicant satisfies the legal requirements for the retirement allowance at the time the application is filed.

(2) A full month's retirement allowance shall be payable for the month in which a retirant or retirement allowance beneficiary ceases to be eligible for continuation of benefits. If eligibility ceases because of death, the payment shall be made to the retirement allowance beneficiary, if any, or to the deceased recipient's estate or to the legal representative of the deceased recipient.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1384 Retirement allowance; benefits; applicability of reduction; recalculation of retirement allowance; adjusted retirement allowance; election to return retirement allowance payments.**

Sec. 84.

(1) Subject to section 84b and except as provided in subsection (2), upon the member's retirement from service as provided in section 81, a member shall receive a retirement allowance that equals the product of the member's total years, and fraction of a year, of credited service multiplied by 1.5% of the member's final average compensation. A member shall not be allowed to use more than 15 years of out of system public education service,

or more out of system public education service than service performed under this act or former 1945 PA 136 unless, before July 1, 1974, the member applied for out of system public education service credit based upon payment of contributions for the service as required under section 69, or former acts, in which case the total out of system public education service credited, not to exceed 15 years, shall be used to compute the member's retirement allowance if the minimum service requirements performed under this act or former acts or as a state employee under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, are met. Credit for state of Michigan service shall be on the same basis for eligibility for retirement provided in this act as if the service were performed under this act, former 1945 PA 136, former 1941 PA 56, or former 1937 PA 184.

(2) If a member having less than 30 years credited service retires before the member's sixtieth birthday as provided in section 81, the member's retirement allowance provided in subsection (1) shall be reduced 1/2 of 1% for each month, and fraction of a month, within the period from the effective date of the member's retirement to the date of the member's sixtieth birthday, and shall continue at that same percentage after becoming 60 years of age.

(3) The reduction of 1/2 of 1% for each month and fraction of a month from the member's retirement allowance effective date to the date of the member's sixtieth birthday provided for in former 1945 PA 136, applicable to a member who retired before July 1, 1974 and before attainment of age 60, shall not apply to a member who retired before that date, at age 55 or more, having 30 or more years of credited service. The retirement allowance shall be recalculated disregarding the reduction and the person receiving the retirement allowance shall be eligible to receive an adjusted retirement allowance based on the recalculation beginning January 1, 1986, but shall not be eligible to receive the adjusted amount attributable to any month beginning before January 1, 1986.

(4) The reduction provided for in subsection (2) shall not apply to a member who retires under either section 86 or 87, or to a retirement allowance beneficiary who is granted an allowance under section 43c(c), 89, or 90.

(5) The retirement allowance of a person who satisfies the requirements of this subsection shall be recalculated based on 1.5% of final average compensation times years of credited service. The person receiving the retirement allowance shall be eligible to receive an adjusted retirement allowance based on the recalculation beginning January 1, 1986, but shall not be eligible to receive the adjusted amount attributable to any month beginning before January 1, 1986. A retirement allowance shall be recalculated under this subsection if 1 of the following applies:

(a) The retirement allowance was payable to a retirant or retirement allowance beneficiary under chapter II of former 1945 PA 136 and the retirement allowance effective date was on or after July 1, 1956 but before July 1, 1974.

(b) The retirement allowance was payable to a plan II retirant or retirement allowance beneficiary under chapter I of former 1945 PA 136 and the retirement allowance effective date was before July 1, 1974.

(6) A member retiring pursuant to section 81 who acquires at least 5 years of combined credited service under this act or under former 1945 PA 136, and who is already in receipt of a retirement allowance under chapter II of former 1945 PA 136, may elect to return to the retirement system any retirement allowance payments received, and receive a single retirement allowance computed on the combined years of service credited under this act and any former act.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

### 38.1384b Retirement allowance for member making alternative election under section 59(2)(a) or (b); calculation; items of credited service under section 59(1); accumulation of years of service credit for purpose of vesting; calculation of retirement allowance under section 59(1) but not making attainment date designation; "attainment date" defined.

Sec. 84b.

(1) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who did not make the election under section 59(1) and who made or is considered to have made the alternative election under section 59(2)(a) must include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to the member before the transition date.

(b) Service credit that was purchased before February 1, 2013.

(c) Service credit that is purchased under a payment plan under this act that was in effect as of February 1, 2013.

(d) Credit for years of service under sections 73 and 108(10).

(2) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (1) must also include the following items of credited service, as applicable, multiplied by 1.25% of final average compensation:

(a) The years and fraction of a year of credited service accrued to the member on and after the transition date.

(b) Service credit that was purchased on and after February 1, 2013, except as provided in subsection (1)(c).

(3) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who did not make the election under section 59(1) and who made the alternative election under section 59(2)(b) must include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to the member before the transition date.

(b) Service credit that was purchased before February 1, 2013.

(c) Service credit that is purchased under a payment plan under this act that was in effect as of January 31, 2013.

(d) Credit for years of service under sections 73 and 108(10).

(4) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (3) must not include any year or fraction of a year of service performed by the member on and after the transition date or any service credit that is purchased by the member after February 1, 2013, except as provided in subsection (3)(c). Beginning with the first payroll date after the transition date, and ending on the member's termination of service, the employer of a member described in subsection (3) shall contribute 4% of the member's compensation as defined in section 122(2) to the member's Tier 2 account. A member is vested in employer contributions made under this subsection according to the vesting provisions under section 132. A member must be credited with years of service accrued under Tier 1 as of the transition date for purposes of meeting the applicable vesting requirements. Beginning with the first payroll date after 90 days after the effective date of the 2018 amendatory act that amended this section, all of the following apply to a member described in subsection (3):

(a) Unless the member affirmatively elects not to contribute or elects to contribute a lesser amount, the member shall contribute 3% of his or her compensation to his or her Tier 2 account.

(b) The member's employer shall make a contribution to the member's Tier 2 account in an amount equal to 100% of the first 3% of compensation contributed by the member under subdivision (a).

(5) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member who makes the election and attainment date designation under section 59(1) must include only the following items of credited service, as applicable, multiplied by 1.5% of final average compensation as provided in section 84:

(a) The years and fraction of a year of credited service accrued to the member on or before the attainment date.

(b) Service credit that was purchased on or before the attainment date.

(c) Service credit that is purchased under a payment plan under this act that was in effect as of the attainment date.

(d) Credit for years of service under sections 73 and 108(10).

(6) Beginning February 1, 2013, the calculation of a retirement allowance under this act for a member described in subsection (5) must also include the following items of credited service, as applicable, multiplied by 1.25% of final average compensation:

(a) The years and fraction of a year of credited service accrued to the member on and after the attainment date.

(b) Service credit that was purchased on and after the attainment date, except as provided in subsection (5)(c).

(7) Beginning on the transition date, a member described in subsection (1), (3), or (5) must continue to accumulate years of service credit as necessary for the purpose of vesting in a retirement allowance and to determine when a retirement allowance may begin under this act, regardless of when the service credit was accrued, except as otherwise provided in section 59(8). A member described in subsection (1), (3), or (5) must continue to be treated as a member for all purposes, except as otherwise provided in section 59(8) and except for the limitations on credited service and calculation of a retirement allowance as provided in subsections (1) through (6).

(8) The calculation of a retirement allowance under this act for a member who makes the election under section 59(1) but who does not make the attainment date designation under section 59(1) must include all items of credited service accrued to the member, regardless of when the service credit was accrued, which must be multiplied by 1.5% of final average compensation as provided in section 84.

(9) As used in this section, "attainment date" means the final day of the pay period in which the member attains 30 years of credited service.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2012, Act 359, Imd. Eff. Dec. 14, 2012 ;-- Am. 2018, Act 169, Imd. Eff. June 4, 2018

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue

code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

**38.1385 Payment options; election; change of option or beneficiary; payment to beneficiary; reversion of benefit to straight retirement allowance; term of payment; beneficiary predeceasing retirant who returns to service; effect of election of retirant's divorce from spouse designated as beneficiary; payment of difference between accumulated contributions and aggregate amount of retirement allowance payments; change of beneficiary; optional form of benefit payment; limitation; termination.**

Sec. 85.

(1) A retiring member or retiring deferred member who meets the requirements of section 81 or 81a or a member whom the retirement board finds to be totally and permanently disabled and eligible to receive a retirement allowance under section 86 or 87 shall elect to receive his or her retirement allowance under 1 of the payment options provided in this subsection. The election shall be in writing and filed with the retirement board at least 15 days before the effective date of the retirement allowance except as provided for a disability retirant under section 86 or 87. The amount of retirement allowance under subdivision (b), (c), or (d) shall be the actuarial equivalent of the amount of retirement allowance under subdivision (a). The options are as follows:

(a) A retirant shall be paid a straight retirement allowance for life computed pursuant to section 84. An additional retirement allowance payment shall not be made upon the retirant's death.

(b) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or deferred member designates in a writing filed with the retirement board at the time of election of this option. A member or deferred member may elect this option and designate a retirement allowance beneficiary under the conditions set forth in section 82(2) or 89(3).

(c) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of 1/2 of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(d) On and after January 1, 2000, a retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of 75% of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(2) In addition to the election under subsection (1), a retirant, other than a disability retirant who is 60 years of age or less, may elect to coordinate his or her retirement allowance with an estimated primary social security benefit. The retirant shall be paid an increased retirement allowance until 62 years of age and a reduced retirement allowance after 62 years of age. The increased retirement allowance paid until 62 years of age shall approximate the sum of the reduced retirement allowance payable after 62 years of age and the retirant's estimated social security primary insurance amount. The estimated social security primary insurance amount shall be determined by the retirement system. The election under this subsection shall be made at the same time and in the same manner as required under subsection (1).

(3) Except as otherwise provided in this section, the election of a payment option in subsections (1) and (2) shall not be changed on or after the effective date of the retirement allowance. Except as provided in this section, the retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) shall not be changed on or after the effective date of the retirement allowance and shall be either a spouse, brother, sister, parent, or child, including an adopted child, of the member, deferred member, retiring member, or retiring deferred member entitled to make the election under this act. Another retirement allowance beneficiary shall not be selected. If a member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date, an election under subsection (1), other than an election under subsection (1)(b), (c), or (d) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse, except that this requirement may be waived by the board if the signature of a spouse cannot be obtained because of extenuating circumstances. For purposes of this subsection, "spouse" means the person to whom the member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date. Payment to a retirement allowance beneficiary shall start the first day of the month following the retirant's death.

(4) Except as otherwise provided in subsection (8), if the retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) predeceases the retirant, the retirant's benefit shall revert to a straight retirement allowance including post-retirement adjustments, if any, shall be effective the first of the month following the death,

and shall be paid during the remainder of the retirant's life. This subsection applies to a retirant whose effective date of retirement is after June 28, 1976, but the straight retirement allowance shall not be payable for any month beginning before the later of the retirement allowance beneficiary's death or October 31, 1980. This subsection also applies to a retirant whose effective date of retirement was on or before June 28, 1976, but the straight retirement allowance shall not be payable for any month beginning before the later of the retirement allowance beneficiary's death or January 1, 1986. A retirant who on January 1, 1986 is receiving a reduced retirement allowance because the retirant designated a retirement allowance beneficiary and the retirement allowance beneficiary predeceased the retirant is eligible to receive the straight retirement allowance beginning January 1, 1986, but the straight retirement allowance shall not be payable for any month beginning before January 1, 1986.

(5) A retirant who returns to service pursuant to section 61 and whose retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) predeceases the member before he or she again becomes a retirant may again choose a retirement allowance beneficiary pursuant to subsection (1)(b), (c), or (d).

(6) If a retirant receiving a reduced retirement allowance under subsection (1)(b), (c), or (d) is divorced from the spouse who had been designated as the retirant's retirement allowance beneficiary under subsection (1)(b), (c), or (d), the election of a reduced retirement allowance payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689, and dated after June 27, 1991 provides that the election of a reduced retirement allowance payment option under subsection (1)(b), (c), or (d) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement allowance payment option under subsection (1)(b), (c), or (d) is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a straight retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689. The retirement allowance shall revert to a straight retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(7) If the retirement allowance payments terminate before an aggregate amount equal to the retirant's accumulated contributions has been paid, the difference between the retirant's accumulated contributions and the aggregate amount of retirement allowance payments made shall be paid to the person designated in a writing filed with the retirement board on a form provided by the retirement board. If the designated person does not survive the retirant or retirement allowance beneficiary, the difference shall be paid to the deceased recipient's estate or to the legal representative of the deceased recipient.

(8) A retirant who selected a retirement allowance beneficiary under subsection (1)(b), (c), or (d) may change his or her retirement allowance beneficiary if all of the following apply:

(a) The first retirement allowance beneficiary is a spouse.

(b) The first retirement allowance beneficiary predeceases the retirant after the retirement allowance effective date.

(c) The retirant marries another spouse after the retirement allowance effective date.

(d) The retirant files a written request with the retirement system to name his or her current spouse as a retirement allowance beneficiary not earlier than 180 days and not later than 1 year after the marriage of the retirant and the current spouse except that a retirant whose first retirement allowance beneficiary predeceases the retirant after the retirement allowance effective date and before the effective date of the amendatory act that added this subsection shall have 180 days from the effective date of the amendatory act that added this subsection to file a written request with the retirement system.

(9) A retirant who was not married on his or her retirement allowance effective date and who did not select a payment option provided in this section may select an optional form of benefit payment under subsection (1)(b), (c), or (d) and designate a retirement allowance beneficiary if all of the following apply:

(a) The retirant marries after his or her retirement allowance effective date.

(b) The retirement allowance beneficiary is the retirant's spouse.

(c) The retirement allowance beneficiary is only designated as the retirement allowance beneficiary for that portion of the retirant's retirement allowance that is not subject to an eligible domestic relations order assigning a previous spouse a reduced benefit under section 4(b) of the eligible domestic relations order act, 1991 PA 46, MCL 38.1704.

(d) The retirant files a written request with the retirement system to select the optional form of benefit payment under subsection (1)(b), (c), or (d) and to designate his or her spouse as the retirement allowance beneficiary, not earlier than 180 days and not later than 1 year after the retirant's marriage except that a retirant who marries after

the retirement allowance effective date and before the effective date of the amendatory act that added this subsection shall have 180 days from the effective date of the amendatory act that added this subsection to file a written request with the retirement system.

(10) The retirement allowance of the retirant who makes an election under subsection (8) or (9) shall not be greater than the actuarial equivalent of the retirement allowance as determined by the retirement board that the retirant would otherwise be entitled to under subsection (1)(a) and shall become effective the first day of the month following the filing of the written request with the retirement system.

(11) If the retirant dies no later than 12 months after the effective date of his or her election under subsection (8) or (9), the retirement allowance for the surviving spouse established under subsection (8) or (9) shall terminate 12 months after the death of the retirant.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1991, Act 47, Imd. Eff. June 27, 1991 ;-- Am. 1998, Act 213, Eff. Mar. 23, 1999 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2006, Act 617, Eff. Jan. 1, 2009
**Popular Name:** Act 300

## 38.1386 Disability allowance; requirements; extension of application time limit; computation; effective date.

Sec. 86.

(1) A member whom the retirement board finds to have become totally and permanently disabled for purposes of employment by his or her reporting unit by reason of personal injury or mental or physical illness before termination of reporting unit service and employment shall receive a disability allowance if all of the following requirements are met:

(a) The member has not met age and service requirements of section 81(1)(a) or (b) or, if the member first became a member on or after July 1, 2010, the member has not met age and service requirements of section 81c(1).

(b) The member has at least 10 years of credited service in effect before termination of employment.

(c) The member or reporting unit makes written application to the retirement board not more than 12 months after the date the member terminated public school employment.

(d) The person undergoes an examination by 1 or more practicing physicians or medical officers designated by the retirement board who certify to the retirement board that the member is totally and permanently disabled for performing the duties for the member's position or similar position for which the member is qualified by reason of training, experience, or both.

(2) The retirement board may extend the application time limit provided in subsection (1) not more than 24 months for a member or deferred member who satisfies the other requirements of subsection (1), if evidence of extenuating circumstances is presented to the satisfaction of the retirement board.

(3) The member's disability retirement allowance shall be computed pursuant to section 84. The effective date of the disability retirant's allowance shall be determined pursuant to section 83.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

## 38.1387 Duty disability retirement allowance; requirements; computation; effective date; service credit; adjustment.

Sec. 87.

(1) A member whom the retirement board finds to have become totally and permanently disabled from any gainful employment by reason of personal injury or mental or physical illness while serving as an employee of that reporting unit shall receive a duty disability retirement allowance if all of the following requirements are met:

(a) The member has not met age and service requirements of section 81(1)(a) or (b) or, if the member first

became a member on or after July 1, 2010, the member has not met age and service requirements of section 81c(1).

(b) The member is in receipt of weekly worker's disability compensation on account of employment by a reporting unit.

(c) The member or reporting unit makes written application to the retirement board not more than 12 months after the date the member terminated public school employment.

(d) The member undergoes an examination by 1 or more practicing physicians or medical officers designated by the retirement board who certify to the retirement board that the member is totally and permanently disabled for performing the duties for the member's position for which the member is qualified by reason of training, or experience, or both.

(2) The member's duty disability retirement allowance shall be computed pursuant to section 84. The effective date of the duty disability retirant's allowance shall be the first of the month following the month in which the member terminates employment and is in receipt of weekly worker's disability compensation. The years of service credit used in computing the retirant's duty disability retirement allowance shall not be less than 10 years. If the member has less than 5 consecutive years of credited service, the average of the member's annual compensation shall be used.

(3) Upon recovery and return to reporting unit service or upon termination of the statutory period for the payment of a disability retirant's worker's disability compensation, if any, arising on account of the retirant's reporting unit service, the retirant shall be given service credit for the period and the retirant's disability retirement allowance shall be adjusted to include the additional credit.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

**38.1388 Duty or nonduty disability retirant; medical examination; affidavit; deception; discontinuance or revocation of nonduty disability retirement allowance; return to membership; restoration of credited service; restoration of duty disability retirant to active service; cessation of allowance or rights to allowance; lump sum payment; payment on retirant's sixtieth birthday; reduction of retirement allowance; computation of allowable earnings; applicability of subsection (4).**

Sec. 88.

(1) The retirement board may require a duty or nonduty disability retirant to submit to a medical examination by a practicing physician or a medical officer designated by the retirement board as necessary for proof of eligibility for continuance of the disability allowance. The retirement board may require each disability retirant who is 59 years of age or less to submit a sworn affidavit during January of each year, in the form and manner prescribed by the retirement board, attesting that the retirant believes himself or herself to be totally and permanently disabled for the same reason for which the disability allowance was granted, and disclosing any significant change in physical or mental condition that occurred during the preceding 12-month period because of medical treatment. A retirant who submits information with intent to deceive may have the disability retirement allowance revoked by the retirement board.

(2) The retirement board may discontinue a nonduty disability retirement allowance if medical examination reports indicate that the retirant no longer is disabled. If a nonduty disability retirant refuses to submit to an examination, the retirant's disability retirement allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 12 months, the retirant's rights to a nonduty disability retirement allowance shall be revoked by the retirement board. However, upon the retirant's sixtieth birthday the retirant shall be paid a retirement allowance based on the final average compensation, service, and benefit formula as of the effective date of the retirant's nonduty disability retirement allowance if the retirant's contributions are left on deposit. If the nonduty disability retirant returns to membership service after termination of a disability allowance, the retirant shall again become a member of the retirement system. The retirant's credited service in effect at the time of disability retirement shall be restored.

(3) If, upon examination of a duty disability retirant, the medical report indicates that the retirant no longer is disabled and is capable of resuming public school employment, the retirant shall be restored to active service with the reporting unit from which the person terminated employment and the duty disability retirement allowance shall cease. Payment of the duty disability retirement allowance shall continue until the retirant is actually returned to reporting unit service in a position for which the retirant is qualified by reason of training, or experience, or both.

The retirant again shall become a member of the retirement system and the retirant's credited service in effect at the time of duty disability retirement shall be restored. If the retirant refuses to either submit to a medical examination or to return to reporting unit service and if either refusal continues for 12 months, the retirant's rights to a duty disability retirement shall cease. A lump sum payment shall be made of the difference between the retirant's accumulated contributions at time of retirement and the aggregate amount of the retirant's disability retirement allowance payments, unless the retirant has acquired 10 or more years of credited service before the time of his or her duty disability allowance. In that event, upon the retirant's sixtieth birthday, the retirant shall be paid a retirement allowance based upon the final average compensation, service, and benefit formula as of the effective date of the duty disability retirement allowance, if the retirant's contributions as a member are left on deposit.

(4) If a disability retirant becomes engaged in gainful employment, and if the total of the retirant's income from the employment and retirement allowance exceeds the retirant's final average compensation, the retirement allowance shall be reduced to an amount which when added to the amount earned by the retirant equals the retirant's final average compensation. For purposes of computing allowable earnings under this subsection, the final average compensation shall be increased by 2% for each 12 months elapsed after the date the retirement allowance commenced. This subsection shall not apply on or after the date the duty or nonduty disability retirant otherwise would have been eligible for an age and service retirement allowance if the retirant had not become disabled, but the retirant shall be subject to section 61.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

**38.1389 Surviving spouse; computation, payment, and termination of retirement allowance; remarriage of surviving spouse; allowance for surviving child less than 18; election of retirement allowance beneficiary; grounds for voiding election; death of member; presumption of dependency; termination of allowance; payment to refund beneficiary; member contributing to member investment plan.**

Sec. 89.

(1) If a member who continues as a public school employee on or after either the date the member has 15 years of credited service in effect, or the date of the member's sixtieth birthday if the member has 10 years of credited service in effect, dies before the effective date of his or her retirement and leaves a surviving spouse to whom the deceased member was married at time of death, the surviving spouse shall receive a retirement allowance computed in the same manner as if the deceased member had retired effective the day preceding the date of the deceased member's death, elected the option set forth in subsection (3), and nominated the surviving spouse as retirement allowance beneficiary. The surviving spouse's retirement allowance shall terminate upon the surviving spouse's death. A surviving spouse who on June 27, 1984, is receiving a retirement allowance under this section or the predecessor to this section under former Act No. 136 of the Public Acts of 1945 shall be eligible to continue receiving that retirement allowance regardless of the surviving spouse's remarriage. A surviving spouse whose retirement allowance under this section or the predecessor to this section under former Act No. 136 of the Public Acts of 1945 was terminated due to the surviving spouse's remarriage shall be eligible to receive that allowance beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the allowance attributable to any month beginning before the month of reinstatement under this section. A surviving spouse of a person who was a deferred member on October 31, 1980, who becomes eligible to receive a retirement allowance under this section or the predecessor to this section under former Act No. 136 of the Public Acts of 1945, shall be eligible to receive that retirement allowance and that allowance shall not be subject to termination because of the surviving spouse's remarriage.

(2) If the other requirements of subsection (1) are met but a surviving spouse does not exist, each of the deceased member's surviving children less than 18 years of age shall receive an allowance of an equal share of the retirement allowance which would have been paid to the spouse if living at the time of the deceased member's death. Payments under this subsection shall cease upon the surviving child's marriage, adoption, or becoming 18 years of age, whichever occurs first.

(3) A member who continues as a public school employee on or after either the date the member has 15 years of credited service in effect, or the date of the member's sixtieth birthday if the member has 10 years of credited service in effect, may elect the option provided in section 85(1)(b) and nominate a retirement allowance beneficiary as provided in section 85(3). The election shall be in writing and filed with the retirement board in a manner and form prescribed by the retirement board. The election shall be void upon the member's retirement, termination of employment except as provided in section 82(2), divorce, the retirement allowance beneficiary's death, or upon the retirement allowance beneficiary no longer being dependent upon the member before the member's death. If a

member who has an option election under section 85(1)(b) in effect dies before the effective date of his or her retirement, the member's retirement allowance beneficiary, so long as the beneficiary continues to be so dependent, shall receive the same retirement allowance as the retirement allowance beneficiary would have been entitled to receive under the option provided in section 85(1)(b) if the member had been regularly retired pursuant to section 81 or 82 the day preceding the date of the member's death, even though the member may not have acquired entitlement to service retirement. The surviving spouse of the deceased member shall be presumed to be 50% dependent on the deceased member for his or her own financial support. The surviving spouse's retirement allowance shall terminate upon the surviving spouse's death.

(4) If at the time a retirement allowance beneficiary's retirement allowance granted by this section is terminated, the aggregate amount of retirement allowance payments received by the retirement allowance beneficiary are less than the accumulated contributions credited to the deceased member's account in the reserve for employee contributions at the time of the deceased member's death, the difference between the deceased member's accumulated contributions and the aggregate amount of retirement allowance payments received by the retirement allowance beneficiary shall be paid to the deceased member's refund beneficiary.

(5) For a member who contributes to the member investment plan, the credited service eligibility requirement applicable to the survivor benefits provided in this section are subject to section 43c.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1984, Act 162, Imd. Eff. June 27, 1984 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

**38.1390 Surviving spouse of deceased member receiving worker's disability compensation; computation, payment, and termination retirement allowance; remarriage of surviving spouse; allowance for surviving children less than 18; computation, payment, and termination of allowance for surviving child less than 18 or for surviving dependent parent; computation and effective date of retirement allowance beneficiary's duty death retirement allowance; use of average annual compensation; election to accept refund; payment to legal representative of deceased member's or retirant's estate.**

Sec. 90.

(1) If a member dies as a result of injury or illness arising out of and in the course of the member's reporting unit service for which worker's disability compensation is paid, or a duty disability retirant who is in receipt of weekly worker's disability compensation on account of the retirant's reporting unit service dies from the same causes for which the person retired within 36 months after the retirant's retirement, and in either case the death or the illness or injury resulting in death is found by the retirement board to have resulted, without the member's or retirant's willful negligence, from the performance of the member's or retirant's reporting unit service, the surviving spouse of the deceased member or retirant shall receive a retirement allowance computed in the same manner as if the member or retirant had retired for reasons of age and service effective the day preceding the date of the member's or retirant's death, elected the option provided in section 85(1)(b), and nominated the surviving spouse as retirement allowance beneficiary. The surviving spouse's retirement allowance shall terminate upon death. A surviving spouse who on June 27, 1984, is receiving a retirement allowance under this section or the predecessor to this section under former Act No. 136 of the Public Acts of 1945 shall be eligible to continue receiving that retirement allowance regardless of the surviving spouse's remarriage. A surviving spouse whose retirement allowance under this section or the predecessor to this section under former Act No. 136 of the Public Acts of 1945 was terminated due to the surviving spouse's remarriage shall be eligible to receive that allowance beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the allowance attributable to any month beginning before the month of reinstatement under this section.

(2) If the other requirements of subsection (1) are met but a surviving spouse does not exist, each child of the deceased member or duty disability retirant who is less than 18 years of age shall receive an allowance of an equal share of the retirement allowance which would have been paid to the spouse if living at the time of the member's or retirant's death. Payments under this subsection shall cease upon marriage, adoption, or becoming 18 years of age, whichever occurs first.

(3) If the other requirements of subsection (1) are met and neither a surviving spouse nor an eligible child surviving the deceased member or duty disability retirant exists, a monthly allowance shall be paid to 1 surviving dependent parent whom the retirement board finds to be totally and permanently disabled and to have been dependent upon the deceased member or retirant for at least 50% of the parent's financial support. The allowance shall be computed in the same manner as if the deceased member or retirant had retired for reasons of age and

service effective the day preceding the member's or retirant's death, elected the option provided in section 85(1)(b), and nominated the surviving parent as retirement allowance beneficiary. The surviving parent's beneficiary retirement allowance shall terminate upon marriage or death.

(4) The retirement allowance beneficiary's duty death retirement allowance shall be computed pursuant to section 84, except that the reduction for early retirement shall not apply. The effective date of the retirement allowance beneficiary's duty death retirement allowance shall be the first of the month following the month in which the member or retirant died. The years of service credit used in computing the retirement allowance beneficiary's duty death retirement allowance shall not be less than 10 years. If the deceased member or duty disability retirant has less than 5 consecutive years of credited service, the average of the decedent's annual compensation shall be used.

(5) Instead of the duty death benefits provided in this section to an eligible retirement allowance beneficiary, the retirement allowance beneficiary, before receipt of his or her first payment, may elect to accept a refund of the deceased member or duty disability retirant's accumulated contributions.

(6) If, at the time a retirement allowance beneficiary's duty death retirement allowance granted by this section is terminated, the aggregate amount of retirement allowance payments received by the retirement allowance beneficiary is less than the accumulated contributions credited to the deceased member's or duty disability retirant's account in the reserve for employee contributions and the reserve for member investment plan at the time of the member's or retirant's death, the difference between the accumulated contributions and the aggregate amount of retirement allowance payments received by the retirement allowance beneficiary shall be paid to the legal representative of the deceased member's or retirant's estate.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1984, Act 162, Imd. Eff. June 27, 1984 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1391 Hospital, medical-surgical, and sick care retirant benefits; dental and vision retirant benefits; retirement system premium; maximum contribution rate; health benefits coverage for dependent of retirant; coordination of benefits; definitions.

Sec. 91.

(1) Except as otherwise provided in this section, the retirement system shall pay the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Except as otherwise provided in this section, beginning January 1, 2013, the retirement system shall pay 80% of the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Except as otherwise provided in subsections (7) to (15), for a retirant or retirement allowance beneficiary who is enrolled in the hospital, medical-surgical, and sick care benefits plan on January 1, 2013 and who is eligible for medicare on that date, the retirement system shall pay 90% of the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Except as otherwise provided in subsection (8), this subsection does not apply to a retirant who first becomes a member after June 30, 2008.

(2) The retirement system may pay up to the maximum of the amount payable under subsection (1) toward the monthly premium for hospital, medical-surgical, and sick care benefits for the benefit of a retirant or retirement allowance beneficiary enrolled in a group health insurance or prepaid service plan not authorized by the retirement board and the department, if enrolled before June 1, 1975, for whom the retirement system on July 18, 1983 was making a payment towards his or her monthly premium.

(3) A retirant or retirement allowance beneficiary receiving hospital, medical-surgical, and sick care benefits coverage under subsection (1) or (2), until eligible for medicare, shall have an amount equal to the cost chargeable to a medicare recipient for part B of medicare deducted from his or her retirement allowance.

(4) Until December 31, 2012, the retirement system shall pay 90% of the monthly premium or membership or subscription fee for dental and vision benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Except as otherwise provided in this section, beginning January 1, 2013, the retirement system shall pay 80% of the monthly premium or membership or subscription fee for dental and vision benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Except as otherwise provided in subsections (7) to (15), for a retirant or retirement allowance beneficiary who is enrolled in

the dental and vision plan on January 1, 2013 and who is 65 years of age or older on that date, the retirement system shall pay 90% of the entire monthly premium or membership or subscription fee for dental and vision benefits for the benefit of a retirant or retirement allowance beneficiary who elects coverage in the plan authorized by the retirement board and the department. Payments shall begin under this subsection upon approval by the retirement board and the department of plan coverage and a plan provider. Except as otherwise provided in subsection (8), this subsection does not apply to a retirant who first becomes a member after June 30, 2008.

(5) Until December 31, 2012, the retirement system shall pay up to 90% of the maximum of the amount payable under subsection (1) toward the monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits coverage described in subsections (1) and (2) for each health insurance dependent of a retirant receiving benefits under subsection (1) or (2). Until December 31, 2012, payment shall not exceed 90% of the actual monthly premium or membership or subscription fee. Except as otherwise provided in subsections (7) through (15), for a health insurance dependent who is enrolled in the hospital, medical-surgical, and sick care benefit plan on January 1, 2013 and who is eligible for medicare on that date, the retirement system shall pay 90% of the entire monthly premium or membership or subscription fee for hospital, medical-surgical, and sick care benefits for the benefit of each health insurance dependent of a retirant receiving benefits under subsection (1) or (2). Until December 31, 2012, the retirement system shall pay 90% of the monthly premium or membership or subscription fee for dental and vision benefits described in subsection (4) for the benefit of each health insurance dependent of a retirant receiving benefits under subsection (4). Beginning January 1, 2013, any payment described in this subsection shall not exceed 80% of the actual monthly premium or membership or subscription fee. Except as otherwise provided in subsections (7) to (15), for a health insurance dependent of a retirant who is enrolled in the dental and vision plan on January 1, 2013 and who is 65 years of age or older on that date, the retirement system shall pay 90% of the entire monthly premium or membership or subscription fee for dental and vision benefits for the benefit of each health insurance dependent of the retirant receiving benefits under subsection (4). Payment for health benefits coverage for a health insurance dependent of a retirant shall not be made after the retirant's death, unless the retirant designated a retirement allowance beneficiary as provided in section 85 and the dependent was covered or eligible for coverage as a health insurance dependent of the retirant on the retirant's date of death. Payment for health benefits coverage shall not be made for a health insurance dependent after the later of the retirant's death or the retirement allowance beneficiary's death. Payment under this subsection and subsection (6) began October 1, 1985 for health insurance dependents who on July 10, 1985 were covered by the hospital, medical-surgical, and sick care benefits plan authorized by the retirement board and the department. Payment under this subsection and subsection (6) for other health insurance dependents shall not begin before January 1, 1986. Except as otherwise provided in subsection (8), this subsection does not apply to a retirant who first becomes a member after June 30, 2008.

(6) The payment described in subsection (5) shall also be made for each health insurance dependent of a deceased member or deceased duty disability retirant if a retirement allowance is being paid to a retirement allowance beneficiary because of the death of the member or duty disability retirant as provided in section 43c(c), 89, or 90. Payment for health benefits coverage for a health insurance dependent shall not be made after the retirement allowance beneficiary's death.

(7) The payments provided by this section shall not be made on behalf of a retiring section 82 deferred member or health insurance dependent of a deferred member having less than 21 full years of attained credited service or the retiring deferred member's retirement allowance beneficiary, and shall not be made on behalf of a retirement allowance beneficiary of a deferred member who dies before retiring. The retirement system shall pay, on behalf of a retiring section 82 deferred member or health insurance dependent of a deferred member or a retirement allowance beneficiary of a deceased deferred member, either of whose allowance is based upon not less than 21 years of attained credited service, 10% of the payments provided by this section, increased by 10% for each attained full year of credited service beyond 21 years, not to exceed 100% of the payments provided by this section. This subsection applies to any member who first became a member on or before June 30, 2008 and attains deferred status under section 82 after October 31, 1980.

(8) For a member or deferred member who first becomes a member after June 30, 2008 and before September 4, 2012, the retirement system shall pay up to 80% of the monthly premium or membership or subscription fee for the hospital, medical-surgical, and sick care benefits plan, the dental plan, and vision plan, or any combination of the plans for the benefit of the retirant and his or her retirement allowance beneficiary and health insurance dependents, or for the benefit of the deceased member's retirement allowance beneficiary if the retirant or deceased member has 25 years or more of service credit under this act, and the retirant, deceased retirant, or deceased member was at least 60 years of age at the time of application for benefits under this section. If the retirant or deceased member is less than 60 years of age at the time of application for benefits under this section, the retirement system shall pay 80% of the monthly premium or membership or subscription fee for the hospital, medical-surgical, and sick care benefits plan, the dental plan, and vision plan, or any combination of the plans for the benefit of the retirant and his or her retirement allowance beneficiary and the retirant's health insurance dependents, or for the benefit of the deceased member's retirement allowance beneficiary if the retirant or deceased member has 25 or more years of service credit granted under section 68. If a retirant, deceased retirant, or deceased member described in this

subsection has 10 or more but less than 25 years of service credit under this act and the retirant was at least 60 years of age at the time of application for benefits under this section, the retirement system shall pay a portion of the monthly premium or membership or subscription fee for the plans or combination of plans equal to the product of 3% and the retirant's, deceased retirant's, or deceased member's years of service for the first 10 years and 4% for each year after the first 10 years, up to 80%. This subsection does not apply to a member who receives a disability retirement allowance under section 86 or 87 or to a deceased member's retirement allowance beneficiary under section 90.

(9) The retirement system shall not pay the premiums or membership or subscription fees under subsection (8) until the retirant or retirement allowance beneficiary requests enrollment in the plans or combination of plans in writing in the manner prescribed by the retirement system. Not more than 1 year of service credit shall be counted for purposes of this subsection and subsection (8) in any school fiscal year.

(10) A member who retires under section 43b or 81 and who elects to purchase service credit on or after July 1, 2008 is not eligible for payments under this section for the hospital, medical-surgical, and sick care benefits plan, the dental plan, or vision plan, or any combination of the plans described in this section until the first date that the member would have been eligible to retire under section 43b or 81 if he or she had not purchased the service credit and had accrued a sufficient amount of service credit under section 68. A member who first becomes a member on or after July 1, 2008 shall not be eligible for health benefits under this subsection until at least the time of application under subsection (8). The retirement system shall apply a method that enables it to make the determination under this subsection.

(11) Except for a member who retires under section 86 or 87 or a member who meets the requirements under subsection (7) or (8), the retirement system shall not pay the benefits provided in subsection (1) or (4) unless the member was employed and has received a minimum total of 1/2 of a year of service credit granted pursuant to section 68 during the 2 school fiscal years immediately preceding the member's retirement allowance effective date or the member has received a minimum of 1/10 of a year of service credit granted pursuant to section 68 during each of the 5 school fiscal years immediately preceding the member's retirement allowance effective date. This subsection does not apply to a member who is unable to meet the service credit requirements of this subsection because of 1 or more periods of unpaid leaves of absence approved by the reporting unit during the period of leave of absence, as a result of a mental or physical disability supported by the member's doctor during the period of leave of absence.

(12) Any retirant or retirement allowance beneficiary excluded from payments under this section may participate in the hospital, medical-surgical, and sick care benefits plan, the dental plan, or vision plan, or any combination of the plans described in this section in the manner prescribed by the retirement system at his or her own cost.

(13) The hospital, medical-surgical, and sick care benefits plan, dental plan, and vision plan that covers retirants, retirement allowance beneficiaries, and health insurance dependents pursuant to this section shall contain a coordination of benefits provision that provides all of the following:

(a) If the person covered under the hospital, medical-surgical, and sick care benefits plan is also eligible for medicare or medicaid, or both, then the benefits under medicare or medicaid, or both, shall be determined before the benefits of the hospital, medical-surgical, and sick care benefits plan provided pursuant to this section.

(b) If the person covered under any of the plans provided by this section is also covered under another plan that contains a coordination of benefits provision, the benefits shall be coordinated as provided by the coordination of benefits act, 1984 PA 64, MCL 550.251 to 550.255.

(c) If the person covered under any of the plans provided by this section is also covered under another plan that does not contain a coordination of benefits provision, the benefits under the other plan shall be determined before the benefits of the plan provided pursuant to this section.

(14) Beginning January 1, 2009, upon the death of the retirant, a retirement allowance beneficiary who became a retirement allowance beneficiary under section 85(8) or (9) is not a health insurance dependent and is not entitled to health benefits under this section except as provided in this subsection. Beginning January 1, 2009, a surviving spouse selected as a retirement allowance beneficiary under section 85(8) or (9) may elect the insurance coverages provided in this section if payment for the elected coverages is the responsibility of the surviving spouse and is paid in a manner prescribed by the retirement system.

(15) This section does not apply to a retirant or a health insurance dependent of that retirant under either of the following circumstances:

(a) The individual first became a member or qualified participant on or after September 4, 2012.

(b) The member made the election to opt out of health insurance coverage or receives a separate retirement allowance under section 91a.

(16) For purposes of this section:

(a) "Health insurance dependent" means any of the following:

(i) Except as provided in subsection (14), the spouse of the retirant or the surviving spouse to whom the retirant or deceased member was married at the time of the retirant's or deceased member's death.

(ii) An unmarried child, by birth or adoption, of the retirant or deceased member, until December 31 of the calendar year in which the child becomes 19 years of age.

(iii) An unmarried child, by birth or adoption, of the retirant or deceased member, until December 31 of the calendar year in which the child becomes 25 years of age, who is enrolled as a full-time student, and who is or was at the time of the retirant's or deceased member's death a dependent of the retirant or deceased member as defined in section 152 of the internal revenue code, 26 USC 152.

(iv) An unmarried child, by birth or adoption, of the retirant or deceased member who is incapable of self-sustaining employment because of mental or physical disability, and who is or was at the time of the retirant's or deceased member's death a dependent of the retirant or deceased member as defined in section 152 of the internal revenue code, 26 USC 152.

(v) The parents of the retirant or deceased member, or the parents of his or her spouse, who are residing in the household of the retirant or retirement allowance beneficiary.

(vi) An unmarried child who is not the child by birth or adoption of the retirant or deceased member but who otherwise qualifies to be a health insurance dependent under subparagraph (ii), (iii), or (iv), if the retirant or deceased member is the legal guardian of the unmarried child.

(b) "Medicaid" means benefits under the federal medicaid program established under title XIX of the social security act, 42 USC 1396 to 1396w-5.

(c) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395kkk.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1981, Act 133, Imd. Eff. Oct. 7, 1981 ;-- Am. 1982, Act 258, Imd. Eff. Sept. 30, 1982 ;-- Am. 1983, Act 143, Imd. Eff. July 18, 1983 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1989, Act 193, Imd. Eff. Aug. 25, 1989 ;-- Am. 1996, Act 488, Eff. Mar. 31, 1997 ;-- Am. 1997, Act 143, Imd. Eff. Nov. 19, 1997 ;-- Am. 1998, Act 85, Imd. Eff. May 13, 1998 ;-- Am. 2004, Act 117, Imd. Eff. May 26, 2004 ;-- Am. 2006, Act 617, Eff. Jan. 1, 2009 ;-- Am. 2007, Act 110, Imd. Eff. Oct. 1, 2007 ;-- Am. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012

**Constitutionality:** The Michigan Supreme Court held that the failure by the state to prefund retirement health care benefits is in violation of Const 1963, art 9, § 24. However, the Michigan Supreme Court also held that it has no authority to order the governor or legislature to appropriate funds. Musselman v Engler, 448 Mich 503; 533 NW2d 237 (1995).

**Compiler's Notes:** Section 2 of Act 488 of 1996 provides:"Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

## 38.1391a Retiree health care insurance coverage for employees hired after September 4, 2012; matching contribution in lieu of health insurance coverage benefits; vesting provisions; election to opt out of health insurance coverage premiums; effect of not making election under subsection (5); break in service or reemployment; implementation and applicability of subsections (5) to (10); report; definitions.

Sec. 91a.

(1) An individual who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5) shall not receive any health insurance coverage premium from the retirement system for any benefits under section 91 or as a result of benefits provided under section 86, 87, or 89. In lieu of any of these benefits that might have been paid by the retirement system, a member's or qualified participant's employer shall make a matching contribution up to 2% of the member's or qualified participant's compensation to Tier 2 for each member who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5). A matching contribution under this subsection shall not be used as the basis for a loan from an employee's Tier 2 account. If the department or retirement system offers a health expenditure account or similar account for the purpose of managing a member's health care funds under this section, as permitted by state or federal law, the department or retirement system shall issue a request for proposals before implementation of that health expenditure account or similar account.

(2) An individual who first became a member or qualified participant on or after September 4, 2012 or who made the election under subsection (5) may make a contribution up to 2% of the member's or qualified participant's compensation to a Tier 2 account. A member or qualified participant described in this subsection may make additional contributions to his or her Tier 2 account as permitted by the department and the internal revenue code.

(3) Except as otherwise provided in this subsection, a member or qualified participant is vested in contributions

made to his or her Tier 2 account under subsections (1) and (2) according to the vesting provisions under section 132. A member who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 90 is not vested in any employer contributions under subsection (1) and forfeits the employer contributions and earnings on those contributions.

(4) The contributions described in this section shall begin with the first payroll date after the member or qualified participant is employed or on or after the transition date for a member who makes the election under subsection (5) and end upon his or her termination of employment.

(5) Except as otherwise provided in this section, beginning September 4, 2012 and ending at 5 p.m. eastern standard time on January 9, 2013, the retirement system shall permit each qualified member to make an election to opt out of health insurance coverage premiums that would have been paid by the retirement system under section 91 and opt into the Tier 2 account provisions of this section effective on the transition date. A qualified member who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premiums that would have been paid by the retirement system under section 91 as if that section continued to apply.

(6) A qualified member who does not make the election under subsection (5) continues to be eligible for the payment of health insurance coverage premiums by the retirement system under section 91 and is not eligible for the Tier 2 account provisions of this section. An individual who is not a qualified member, who is a former member on September 3, 2012, and who is reemployed by an employer on or after September 4, 2012 shall be treated in the same manner as a member described in this subsection who did not make the election under subsection (5).

(7) The retirement system shall calculate an amount to be credited to a Tier 2 account for each member who makes the election under subsection (5). The amount described in this subsection shall be an amount equal to the contributions made by the member under section 43e. A member who makes the election under subsection (5) shall cease making contributions under section 43e as determined by the retirement system, but no later than the first payroll date after the transition date. The amount calculated under this subsection shall be deposited as an employer contribution into the member's Tier 2 account as determined by the retirement system, but no later than the first payroll date after March 1, 2013. A member is immediately 100% vested in amounts deposited to his or her Tier 2 account under this subsection.

(8) A member or former member who does not make the election under subsection (5), who is 60 years of age or older, who does not qualify for the payment of health insurance coverage premiums by the retirement system under section 91, and who files an application with the retirement system on or after termination of employment shall receive a separate retirement allowance as calculated under this subsection. Except as otherwise provided under this subsection, the separate retirement allowance under this subsection shall be paid for 60 months and shall be equal to 1/60 of the amount equal to the contributions made by the member under section 43e. The retirement system may pay out de minimus amounts as a lump sum as determined by the retirement system and as permitted by the internal revenue code. A member receiving a separate retirement allowance under this subsection shall not subsequently receive the payment of health insurance coverage premiums by the retirement system under section 91. A member who dies before qualifying for the payment of health insurance coverage premiums by the retirement system under section 91 shall have a separate retirement allowance as provided in this subsection paid to the member's beneficiary upon application to the retirement system. A member who qualifies for the payment of health insurance coverage premiums by the retirement system under section 91 but who dies before the payment of health insurance coverage premiums by the retirement system in an amount equal to or greater than the amounts contributed under section 43e shall have a separate retirement allowance as provided in this subsection paid to the member's beneficiary following the cessation of health insurance coverage premiums paid by the retirement system in an amount equal to the difference between the health insurance coverage premiums paid by the retirement system under section 91 and contributions made by the member under section 43e. The amount of the separate retirement allowance as determined under this subsection shall be increased in a manner as determined by the retirement system by a percentage equal to 1.5% multiplied by the total number of years that member made contributions under section 43e.

(9) A member or former member who has a break in service and is reemployed retains the same election that the member made under this section before the break in service. If the member made the election under subsection (5), the member shall continue to receive the Tier 2 account contributions as provided in subsections (1) and (2). If the member did not make the election under subsection (5), the member shall continue to make the contributions as provided under section 43e and is subject to subsection (8), if applicable.

(10) In lieu of any other health insurance coverage premium that might have been paid by the retirement system under section 91, a credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, shall be made by the retirement system in the amounts and to the members or qualified participants as follows:

(a) Two thousand dollars to an individual who first became a member or qualified participant on or after September 4, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment.

(b) One thousand dollars to an individual who first became a member or qualified participant on or after

September 4, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment.

(11) The retirement system shall determine a method to implement subsections (5) to (10), including a method for crediting the amounts in those subsections to comply with any restrictions imposed by the internal revenue code. Notwithstanding any provision of this act to the contrary, the Tier 2 plan provisions of this section shall be implemented by the department as soon as feasible but not later than January 1, 2013.

(12) Subsections (5) to (10) do not apply to a member who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 90.

(13) On or before July 1, 2017, the retirement system shall provide a report to the chairs of the house and senate appropriations committees that provides the projected impact of subsection (10) as it applies to members first employed and entered upon the payroll of reporting units on or after July 1, 2017 with regard to the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared under section 28(1).

(14) As used in this section:

(a) "Compensation" means that term as defined in section 122(2).

(b) "Qualified member" means a member who meets all of the following requirements:

(i) He or she first became a member before September 4, 2012.

(ii) He or she has earned service credit in the 12 months ending September 3, 2012 or was on an approved professional services or military leave of absence on September 3, 2012.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2012, Act 359, Imd. Eff. Dec. 14, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1392 Long-term care insurance; withholding from retirement allowance.

Sec. 92.

Beginning on July 1, 2004, upon written application of a retirant, the retirement system shall withhold from the retirant's retirement allowance the entire monthly premium for voluntary long-term care insurance for the retirant, the retirement allowance beneficiary, and health insurance dependents, as that term is defined in section 91, who elect coverage in a long-term care insurance plan that is authorized by the retirement system. If the entire monthly premium for retirants, retirement allowance beneficiaries, and health insurance dependents is greater than the retirement allowance, the retirement system shall withhold the entire retirement allowance and apply it to the premium balance.

**History:** Add. 2003, Act 17, Imd. Eff. June 10, 2003
**Popular Name:** Act 300

### 38.1392a Administration of changes; appropriation; work project; carrying forward unencumbered or unallotted funds.

Sec. 92a.

(1) There is appropriated for the fiscal year ending September 30, 2010, $4,500,000.00 to the office of retirement services in the department of technology, management, and budget for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized in subsection (1) is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $4,500,000.00.

(d) The estimated completion date for the work project is September 30, 2011.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1392b Appropriation; purposes; amount; completion date.

Sec. 92b.

(1) There is appropriated for the fiscal year ending September 30, 2012, $4,700,000.00 to the office of retirement services in the department of technology, management, and budget for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized in subsection (1) is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $4,700,000.00.

(d) The estimated completion date for the work project is September 30, 2013.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012
**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

### 38.1392c Appropriation.

Sec. 92c.

(1) There is appropriated for the fiscal year ending September 30, 2017, $5,000,000.00 to the office of retirement services in the department for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized in subsection (1) is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $5,000,000.00.

(d) The estimated completion date for the work project is September 30, 2018.

**History:** Add. 2017, Act 92, Imd. Eff. July 13, 2017
**Popular Name:** Act 300

**38.1393 Third-party study.**

Sec. 93.

(1) The director of the department, senate majority leader, and speaker of the house of representatives shall commission an independent third party at a cost of no more than $150,000.00 to conduct a study and prepare a report analyzing the current retirement system and develop a proposed plan to ensure the long-term sustainability of the retirement system. The office of retirement services on behalf of the department shall assist with the study. Input shall be solicited from the retirement system membership constituency organizations.

(2) On or before November 15, 2012, the study required under subsection (1) shall be delivered to the senate majority leader, speaker of the house of representatives, the senate and house of representatives appropriations committees, and the senate and house of representatives fiscal agencies. The study shall include primary and alternative recommendations considered necessary.

(3) The study required under subsection (1) shall review the advantages and disadvantages of implementing benefit design changes and shall include, but is not limited to, a review of the adequacy of the benefits, long-term retention of employees, investment return and other risk, stranded cost implications, and the economic impact of implementing the following:

(a) Defined contribution, hybrid defined contribution, and other defined contribution plan options as opposed to defined benefit plan options.

(b) Plan design, funding methods, benefits provided, and other features originally enacted or amended in other public state school employee plans and private retirement plans covering comparable employees.

(c) Funding or not funding the annual required contribution as used by the governmental accounting standards board or other annual funding requirements to meet any unfunded liabilities of the retirement system.

(d) Amendments to the retirement system features, such as reporting unit and member contributions, vesting, service credit purchases, retirement allowance calculations, cost of living allowances, rate of investment returns, mortality rates and longevity, and other similar features.

(e) A change in the funding method of health benefits provided under section 91 from a cash disbursement method to an individual projected benefit entry age normal cost method of valuation.

(4) The study required under subsection (1) shall review and identify the normal costs and transition costs of closing to all new members and qualified participants the Tier 1 and Tier 2 plans in effect on the effective date of this section and implementing a defined contribution only plan that is identical to the defined contribution plan established pursuant to section 401(k) of the internal revenue code, 26 USC 401, and that is available to qualified participants under sections 50 to 69 of the state employees' retirement act, 1943 PA 240, MCL 38.50 to 38.69. The study shall include specific recommendations on transitioning from the Tier 1 and Tier 2 plans to a defined contribution only plan that is identical to the defined contribution plan established pursuant to section 401(k) of the internal revenue code, 26 USC 401, and that is available to qualified participants under sections 50 to 69 of the state employees' retirement act, 1943 PA 240, MCL 38.50 to 38.69.

(5) The study required under subsection (1) shall review the degree to which current operating expenditures are a stable, growing, and equitable base for charging unfunded actuarial accrued liability costs to public local school districts, as compared to alternate measures of district financial activity. The study shall include an analysis of the degree to which current unfunded actuarial accrued liabilities are the result of stranded cost factors. The study shall include options regarding the use of current operating expenditures or an alternate measure as the basis for charging unfunded actuarial accrued liability costs to public local school districts. As used in this subsection, "current operating expenditures" for a public local school district includes functions 1xx, 2xx, 45x, and all object codes except 6xxx, as defined in the "Michigan Public School Accounting Manual Bulletin 1022", and is equal to the total of instructional and support services expenditures, including the total general fund charges incurred in the general, special education, and vocational education funds for the benefit of the current fiscal year, whether paid or unpaid, and all expenditures of the instructional programs plus applicable supporting service costs reduced by capital outlay, debt service, community services, and outgoing transfers and other transactions. Current operating expenditures for a public local school district also include operating funds for any public school or other public educational entity first authorized or established by the public local school district on or after the effective date of the amendatory act that added this section.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

Article 6

### 38.1401 Supplemental pension.

Sec. 101.

The supplemental pension paid under section 15a of chapter 1 or section 57 of chapter 2 of former Act No. 136 of the Public Acts of 1945 shall continue to be paid to a retirant or retirement allowance beneficiary. The supplemental benefit, when added to the retirement allowance of the retirant or retirement allowance beneficiary, shall provide before the election of an option or early retirement a minimum retirement allowance of $160.00 for each year of credited service on the date of retirement or death adjusted to the nearest number of even years.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1980, Act 466, Imd. Eff. Jan. 17, 1981 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989
**Popular Name:** Act 300

### 38.1402 Percentage increase to monthly retirement allowance payable after June 30, 1972; continuation.

Sec. 102.

The percentage increase to the monthly retirement allowance payable after June 30, 1972, to a retirant or retirement allowance beneficiary, who was on the rolls for June, 1971, under section 174(1) of former Act No. 258 of the Public Acts of 1972, is continued as follows:

| Effective Date of Retirement | Increase |
|---|---|
| August 1, 1970, to July 1, 1971 | 1% |
| August 1, 1969, to July 1, 1970 | 2% |
| August 1, 1968, to July 1, 1969 | 3% |
| August 1, 1967, to July 1, 1968 | 4% |
| August 1, 1966, to July 1, 1967 | 5% |
| August 1, 1965, to July 1, 1966 | 6% |
| August 1, 1964, to July 1, 1965 | 7% |
| August 1, 1963, to July 1, 1964 | 8% |
| August 1, 1962, to July 1, 1963 | 9% |
| August 1, 1961, to July 1, 1962 | 10% |
| August 1, 1960, to July 1, 1961 | 11% |
| August 1, 1959, to July 1, 1960 | 12% |
| August 1, 1958, to July 1, 1959 | 13% |
| August 1, 1957, to July 1, 1958 | 14% |
| July 1, 1956, to July 1, 1957 | 15% |

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Compiler's Notes:** Act 258 of 1972, referred to in this section, was repealed by Act 101 of 1973, Act 242 of 1974, Act 261 of 1975, Act 258 of 1976, and Act 90 of 1977.
**Popular Name:** Act 300

**38.1403 Percentage increase to monthly retirement allowance payable under former provisions; continuation.**

Sec. 103.

(1) The percentage increase to the monthly retirement allowance payable to a retirant or retirement allowance beneficiary under section 27d of chapter I or section 25a of chapter II of former Act No. 136 of the Public Acts of 1945, is continued as provided in this section.

(2) After June 30, 1974, the monthly retirement allowance payable to a retirant or retirement allowance beneficiary who was on the rolls for June, 1973, is supplemented as follows:

| Effective Date of Retirement | Increase |
|---|---|
| July 1, 1972, to June 30, 1973 | 1% |
| July 1, 1971, to June 30, 1972 | 2% |
| July 1, 1970, to June 30, 1971 | 3% |
| July 1, 1969, to June 30, 1970 | 4% |
| July 1, 1968, to June 30, 1969 | 5% |
| July 1, 1967, to June 30, 1968 | 6% |
| July 1, 1966, to June 30, 1967 | 7% |
| July 1, 1965, to June 30, 1966 | 8% |
| July 1, 1964, to June 30, 1965 | 9% |
| July 1, 1963, to June 30, 1964 | 10% |
| July 1, 1962, to June 30, 1963 | 11% |
| July 1, 1961, to June 30, 1962 | 12% |
| July 1, 1960, to June 30, 1961 | 13% |
| July 1, 1959, to June 30, 1960 | 14% |
| July 1, 1958, to June 30, 1959 | 15% |
| July 1, 1957, to June 30, 1958 | 16% |
| July 1, 1956, to June 30, 1957 | 17% |

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.
**Popular Name:** Act 300

**38.1404 Percentage increase to monthly retirement allowance payable under additional former provisions; continuation.**

Sec. 104.

(1) The percentage increase to the monthly retirement allowance payable to a retirant or retirement allowance beneficiary under either section 27f of chapter I or section 25c of chapter II of former Act No. 136 of the Public Acts of 1945, is continued as provided in this section.

(2) The monthly retirement allowance payable to a retirant or retirement allowance beneficiary after September 30, 1976, who was on the rolls for September 30, 1976, is supplemented as follows:

| Effective Date of Retirement | Supplement for October 1, 1976 and 1977 |
|---|---|
| July 1, 1975, to June 30, 1976 | 1% |
| July 1, 1974, to June 30, 1975 | 2% |
| July 1, 1973, to June 30, 1974 | 3% |
| July 1, 1972, to June 30, 1973 | 4% |
| July 1, 1971, to June 30, 1972 | 5% |

| | |
|---|---|
| July 1, 1970, to June 30, 1971 | 6% |
| July 1, 1969, to June 30, 1970 | 7% |
| July 1, 1968, to June 30, 1969 | 8% |
| Before July 1, 1968 | 8% |

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.
**Popular Name:** Act 300

**38.1404a Determining rate of investment return on retirement system assets and present value of retirement allowances; calculation and reduction of distribution income; crediting distribution units to retirant or retirement allowance beneficiary; calculation and payment of distribution amount; increase in retirement allowance; computation of cumulative increase amount; supplemental payment; increase in retirement allowance effective before October 1, 1981; increase in retirement allowance effective on or before January 1, 1987.**

Sec. 104a.

(1) After the end of each state fiscal year, the department shall determine the rate of investment return earned on retirement system assets during the fiscal year, based upon methods established by the retirement board.

(2) At the end of each state fiscal year, the retirement system's actuary shall determine the present value of retirement allowances to be paid after the end of the fiscal year to retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal period. The assumed interest rate used in the determination shall be 8% per year, compounded annually.

(3) The distribution income at the end of each state fiscal year shall be equal to the product of the present value of retirement allowances determined in subsection (2) at the end of the previous fiscal year times the positive excess, if any, of the rate of investment return determined in subsection (1) exceeding 8%. The distribution income calculated pursuant to this subsection at the end of the fiscal years 1984-85 and 1985-86 shall be reduced by the cost of prior postretirement adjustments paid from the appropriated credit for excess interest earnings on retired life assets during the fiscal year pursuant to sections 101, 102, 103, and 104.

(4) After the end of each state fiscal year, each retirant and retirement allowance beneficiary in receipt of a retirement allowance at the end of the fiscal year, and whose effective date of retirement allowance preceded the beginning of that fiscal year, shall be credited with 1 distribution unit for each full year between the effective date of retirement and the end of the fiscal year and 1 distribution unit for each full year of service credit in force on the effective date of retirement. Distribution units shall not accumulate from 1 year to the next year.

(5) The distribution amount for an individual retirant or retirement allowance beneficiary shall be equal to the product of the distribution income determined in subsection (3) times the individual's number of distribution units determined in subsection (4) divided by the total number of distribution units for all eligible retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal year. The distribution amount for an individual retirant or retirement allowance beneficiary of a retirant or member who contributed to the member investment plan is zero.

(6) Each retirement allowance that was effective on or before January 1, 1987 shall be increased effective on the later of January 1, 1986 or the retirement allowance effective date. The amount of the increase shall be 8% of the retirement allowance that would be payable as of the date of the increase without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected by the member under section 85(1).

(7) Until and including October 1, 1989, each retirement allowance that was effective on or before January 1, 1987 shall be increased each October 1 beginning with the later of October 1, 1986 or the first October 1 following the retirement allowance effective date. The amount of the annual increase shall be equal to 40.5% of the increase computed in subsection (6).

(8) After the end of each state fiscal year, the cumulative increase amount shall be computed for each retirant or retirement allowance beneficiary affected by subsections (6), (7), and (11). The cumulative increase amount shall be equal to the difference between the total retirement allowance paid during the state fiscal year and the retirement allowance that would have been payable without application of subsections (6), (7), and (11). The cumulative increase amount for any retirant or retirement allowance beneficiary whose effective date of retirement is after

January 1, 1987 is zero.

(9) In March of each year, beginning in March, 1986, each retirant or retirement allowance beneficiary shall be paid, in a single supplemental payment, the excess, if any, of the distribution amount over the cumulative increase amount for the previous state fiscal year. If a retirant dies before receipt of a supplemental payment, the supplemental payment shall be made to the retirant's retirement allowance beneficiary, if any. If both the retirant and the retirement allowance beneficiary die before receipt of a supplemental payment, no payment shall be made.

(10) Each retirement allowance that was effective before October 1, 1981 shall be increased effective January 1, 1990. The amount of the increase shall be a percentage of the retirement allowance that is payable as of January 1, 1990 without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected under section 85(1). The percentage is as follows:

| Effective date of retirement | Percentage |
|---|---|
| October 1, 1980 to September 30, 1981 | 1% |
| October 1, 1979 to September 30, 1980 | 2% |
| October 1, 1978 to September 30, 1979 | 3% |
| October 1, 1977 to September 30, 1978 | 4% |
| October 1, 1976 to September 30, 1977 | 5% |
| October 1, 1975 to September 30, 1976 | 6% |
| October 1, 1974 to September 30, 1975 | 7% |
| October 1, 1973 to September 30, 1974 | 8% |
| October 1, 1972 to September 30, 1973 | 9% |
| October 1, 1971 to September 30, 1972 | 10% |
| October 1, 1970 to September 30, 1971 | 11% |
| October 1, 1969 to September 30, 1970 | 12% |
| October 1, 1968 to September 30, 1969 | 13% |
| October 1, 1967 to September 30, 1968 | 14% |
| October 1, 1966 to September 30, 1967 | 15% |
| October 1, 1965 to September 30, 1966 | 16% |
| October 1, 1964 to September 30, 1965 | 17% |
| October 1, 1963 to September 30, 1964 | 18% |
| October 1, 1962 to September 30, 1963 | 19% |
| October 1, 1961 to September 30, 1962 | 20% |
| October 1, 1960 to September 30, 1961 | 21% |
| Before October 1, 1960 | 22% |

(11) Each retirement allowance that was effective on or before January 1, 1987 shall be increased each October 1 beginning October 1, 1990. The amount of the annual increase shall be equal to 3% of the retirement allowance that would be payable without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected under section 85(1).

**History:** Add. 1982, Act 253, Imd. Eff. Sept. 30, 1982 ;-- Am. 1983, Act 6, Imd. Eff. Mar. 14, 1983 ;-- Am. 1984, Act 129, Imd. Eff. June 1, 1984 ;-- Am. 1985, Act 91, Imd. Eff. July 10, 1985 ;-- Am. 1985, Act 218, Imd. Eff. Jan. 10, 1986 ;-- Am. 1986, Act 123, Imd. Eff. June 2, 1986 ;-- Am. 1989, Act 194, Imd. Eff. Aug. 25, 1989 ;-- Am. 1998, Act 213, Eff. Mar. 23, 1999
**Popular Name:** Act 300

### 38.1405 Violation; penalty.

Sec. 105.

A person who, with intent to deceive, makes a false statement in a report or record required under this retirement system, or who, with intent to deceive, violates this act or a rule promulgated under this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $500.00, or both.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300
**Admin Rule:** R 38.1101 et seq. of the Michigan Administrative Code.

### 38.1406 Saving clause.

Sec. 106.

All proceedings pending and all rights and liabilities existing, acquired, or incurred under former Act No. 136 of the Public Acts of 1945 at the time this act takes effect are saved. Those proceedings shall be consummated pursuant to the law in effect when the proceedings were commenced. Those rights and liabilities shall be preserved pursuant to the law in effect on the day immediately preceding the effective date of this act. To the extent that either the kinds of benefits available under the applicable chapter of former Act No. 136 of the Public Acts of 1945 as in effect on the day immediately preceding the effective date of this act or the manner of calculating those benefits under former Act No. 136 of the Public Acts of 1945 results in a greater benefit of any kind than would otherwise be available under this act or include a benefit not otherwise available under this act, the determinations of those kinds of benefits available and the manner of calculating those benefits shall be made pursuant to former Act No. 136 of the Public Acts of 1945 for those members who participated in the retirement system as set forth in former Act No. 136 of the Public Acts of 1945 before the effective date of this act.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Compiler's Notes:** Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980.
**Popular Name:** Act 300

### 38.1407 Repeal of MCL 38.201 to 38.366.

Sec. 107.

Act No. 136 of the Public Acts of 1945, as amended, being sections 38.201 to 38.366 of the Compiled Laws of 1970, is repealed.

**History:** 1980, Act 300, Imd. Eff. Oct. 31, 1980
**Popular Name:** Act 300

### 38.1408 Administration of retirement system as qualified pension plan created in trust under internal revenue code; requirements and benefit limitations; qualified military service.

Sec. 108.

(1) This section is enacted pursuant to federal law 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, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

(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 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 retirement allowance beneficiaries.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member on 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 the act.

(6) If the retirement system is terminated, the interest of the members, deferred members, retirants, and retirement allowance 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 the 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. Beginning October 1, 2010, a nonspouse beneficiary may elect to have any portion of an amount payable under this act that is an eligible rollover distribution treated as a direct rollover that will be paid in a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity described in section 408(a) or (b) of the internal revenue code, 26 USC 408, that is established for the purpose of receiving a distribution on behalf of the beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity pursuant to section 402(c)(11) of the internal revenue code, 26 USC 402.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 45 and 85(1)(b), (1)(c), (1)(d), and (2), the actuarially assumed interest rate shall be determined by the director of the department and the retirement board in consultation with the actuary with utilization of the mortality tables adopted by the department and the retirement board.

(9) 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.

(10) 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.

**History:** Add. 1991, Act 107, Imd. Eff. Oct. 8, 1991 ;-- Am. 1995, Act 177, Imd. Eff. Oct. 17, 1995 ;-- Am. 1998, Act 213, Eff. Mar. 23, 1999 ;-- Am. 2002, Act 94, Imd. Eff. Mar. 27, 2002 ;-- Am. 2008, Act 354, Imd. Eff. Dec. 23, 2008 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

**38.1409-38.1412 Repealed. 1997, Act 143, Imd. Eff. Nov. 19, 1997.**

**Compiler's Notes:** The repealed sections pertained to election to terminate membership in Tier 1 and election to participate in Tier 2.
**Popular Name:** Act 300

Article 7

**38.1420 Tier 2 plan; implementation.**

Sec. 120.

Notwithstanding any other provision of this act, the Tier 2 plan under this article will be implemented by the department as soon as administratively feasible but not later than January 1, 2011.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

**38.1421 Words and phrases in sections 122 to 124; date for implementation of Tier 2 plan.**

Sec. 121.

(1) For the purposes of this article, the words and phrases defined in sections 122 to 124 have the meanings ascribed to them in those sections.
(2) Notwithstanding any other provision of this act, the Tier 2 plan under this article shall be implemented by the department as soon as administratively feasible but not later than January 1, 2011.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

**38.1422 "Accumulated balance" and "compensation" defined.**

Sec. 122.

(1) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.
(2) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer equal to the sum of the following:
(a) A participant's W-2 earnings for services performed for the employer.
(b) Any amount contributed or deferred at the election of the participant which is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1423 "Employer" and "former qualified participant" defined.

Sec. 123.

(1) "Employer" means a reporting unit.

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

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1424 "Plan document," "qualified participant," "refund beneficiary," and "state treasurer" defined.

Sec. 124.

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

(2) "Qualified participant" means an individual who is a participant of Tier 2 and who is first employed and entered on the payroll of his or her employer on or after July 1, 2010, and who also was not employed by any employer before July 1, 2010, except that beginning on the effective date of the amendatory act that added section 42a, qualified participant does not include an individual employed by a reporting unit while enrolled as a student in that same reporting unit if the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2. However, an individual who, on the effective date of the amendatory act that added section 42a, is a qualified participant and is employed by a reporting unit while enrolled as a student in that same reporting unit and the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2 will remain a qualified participant while employed and while enrolled as a student in that same reporting unit and the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2 if the individual elects to remain a qualified participant. The retirement system shall determine a method of administering elections under this subsection.

(3) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 134 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 135.

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

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2018, Act 328, Imd. Eff. July 2, 2018
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."
**Popular Name:** Act 300

**38.1425 Tier 2; department as fiduciary and trustee; appointment of advisory board; provisions and procedures; personnel and other services; adoption and compliance.**

Sec. 125.

(1) The department shall administer Tier 2 and shall be the fiduciary and trustee of Tier 2. The department may appoint an advisory board to assist the department in carrying out its duties as fiduciary and trustee. The department and the state treasurer shall comply with Executive Reorganization Order No. 1999-5, MCL 38.2721, in the administration of Tier 2.

(2) The department shall determine the provisions and procedures of Tier 2 and the plan document in conformity with this act and the internal revenue code.

(3) The department has the exclusive authority and responsibility to employ or contract with personnel and for services that the department determines necessary for the proper administration of and investment of assets of Tier 2, including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

(4) Each employer shall be deemed to have adopted and shall comply with the provisions and procedures of Tier 2 and the plan document.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

**38.1426 Request for hearing; conduct under administrative procedures act of 1969.**

Sec. 126.

(1) A qualified participant, former qualified participant, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the department shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An individual may be represented by counsel or other authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.224 to 24.264 and 24.291 to 24.292, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

**38.1427 Investment; direction by qualified participant, former qualified participant, and refund beneficiary; applicability of limitations; annuity options.**

Sec. 127.

(1) Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the department. The limitations on the percentage of total assets for investments provided in the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141, do not apply to Tier 2.

(2) In addition to the categories of investment provided by the department under subsection (1), the retirement

system shall offer access to 1 or more fixed annuity options and 1 or more variable annuity options.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1428 Tier 2; administrative expenses.

Sec. 128.

The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the department.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1429 Participation in other public sector retirement benefits plan; "public sector employer" defined.

Sec. 129.

A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the department, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code. For the purposes of this section, "public sector employer" includes, but is not limited to, a reporting unit.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1431 Tier 2 account; contributions; additional contribution; additional matching contributions by employer.

Sec. 131.

(1) This section is subject to the vesting requirements of section 132.

(2) Unless a qualified participant who is also a member of Tier 1 affirmatively elects not to contribute or elects to contribute a lesser amount, the qualified participant who is also a member of Tier 1 shall contribute 2% of his or her compensation to his or her Tier 2 account. The qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 50% of the first 2% of compensation contributed by the qualified participant under this subsection.

(3) A qualified participant may make contributions in addition to contributions made under subsection (2) to his or her Tier 2 account as permitted by the department and the internal revenue code.

(4) On the written determination of the director of the office of retirement services, an employee of an employer

that is not a qualified participant may elect to make contributions to a Tier 2 account as permitted by the department and the internal revenue code. An employee as described in this subsection is treated as a qualified participant under this article for the limited purposes of his or her Tier 2 account.

(5) On the written determination of the director of the office of retirement services, an employer may annually elect to make additional matching contributions, including those in addition to matching contributions made under subsections (2) and (6), to an employee's Tier 2 account as permitted by the plan document and the internal revenue code. Matching contributions under this subsection must be made in amounts equal to 50% of the contributions made by the employee not to exceed the first 4% of contributions made in whole percentages only, for any employee in addition to amounts that are already matched under this section, if any.

(6) Except as otherwise provided in section 81d, unless a qualified participant who is only a Tier 2 qualified participant due to an election made under section 81d(1) affirmatively elects not to contribute or elects to contribute a lesser amount, the qualified participant shall contribute 6% of his or her compensation to his or her Tier 2 account. Until January 31, 2018, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 50% of the first 6% of compensation contributed by the qualified participant under this subsection. Beginning February 1, 2018, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 100% of the first 3% of compensation contributed by the qualified participant under this subsection. Beginning February 1, 2018, all contributions made by an employer under this subsection must be paid by appropriation from the state school aid fund established by section 11 of article IX of the state constitution of 1963, assuming 100% participation by all qualified participants.

(7) For a qualified participant who is only a Tier 2 qualified participant under section 81d, beginning with the first available pay period after October 1, 2017, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 4% of the qualified participant's compensation.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010 ;-- Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017

**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides:"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

### 38.1431a Tier 2 accounts; terms and conditions.

Sec. 131a.

Tier 2 accounts are subject to the following terms and conditions:

(a) On or before January 1, 2013, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under this act elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature on or after January 1, 2013, as determined by the retirement system.

(b) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(c) Elective employee contributions shall not be used as the basis for more than an equivalent amount of employer matching contributions or, in the case of matching contributions under section 131(2), 50% of the employer matching contributions.

(d) The retirement system shall design and implement a method to determine the proper allocation of employer matching contributions based on elective employee contributions as provided in this section.

**History:** Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012 ;-- Am. 2017, Act 92, Imd. Eff. July 13, 2017

**Compiler's Notes:** Enacting section 2 of Act 300 of 2012 provides:"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply."(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

**Popular Name:** Act 300

### 38.1432 Vesting.

Sec. 132.

A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1434 Refund beneficiary.

Sec. 134.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the department. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse if the signature of the participant's spouse is required by the plan document. However, the department may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1435 Tier 2; eligibility to receive distribution; effect of death of qualified participant; methods of distribution.

Sec. 135.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the department, the department, in a lump sum distribution, shall distribute the accumulated balance in accordance with the plan document.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the department.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1437 Exemption from state, county, municipal, or local tax; right to setoff to recover overpayments.

Sec. 137.

(1) Distributions from employer contributions made pursuant to section 131(2) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 131(2) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax. Distributions from employer contributions made pursuant to section 131(2) and earnings on those employer contributions and distributions from employee contributions made pursuant to section 131(2) and earnings on those employee contributions are subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

(2) The department has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The department shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

**History:** Add. 2010, Act 75, Imd. Eff. May 19, 2010
**Compiler's Notes:** Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."
**Popular Name:** Act 300

### 38.1451-38.1467 Repealed. 1997, Act 143, Imd. Eff. Nov. 19, 1997.

**Compiler's Notes:** The repealed sections pertained to termination of membership on Tier 1 and contributions to Tier 2 account.

## MUNICIPAL EMPLOYEES RETIREMENT ACT OF 1984

### Act 427 of 1984

AN ACT to provide for a retirement system for municipal and judicial employees; to create a retirement board and to prescribe its powers and duties; to prescribe the powers and duties of certain other state officers and agencies; and to repeal certain acts and parts of acts.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988

*The People of the State of Michigan enact:*

### 38.1501 Short title.

Sec. 1.

This act shall be known and may be cited as the "municipal employees retirement act of 1984".

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985

### 38.1502 Meanings of words and phrases.

Sec. 2.

For the purposes of this act, the words and phrases defined in sections 2a to 2c have the meanings ascribed to them in those sections.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985

### 38.1502a Definitions; C to J.

Sec. 2a.

(1) "Certification date" means August 15, 1996.
(2) "Chief judge" means the chief judge of a judicial circuit court, a judicial district court, or a judicial probate court as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.
(3) "Governing body" means the representative legislative body of a municipality, or the administrative board or commission of a public corporation or instrumentality that does not have a representative legislative body.
(4) "Judicial circuit court" means a judicial circuit of the circuit court as provided in section 11 of article VI of the state constitution of 1963.
(5) "Judicial district court" means a judicial district of the district court as provided in section 8101 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8101.
(6) "Judicial probate court" means a county probate court or probate court district as provided in section 15 of article VI of the state constitution of 1963.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1986, Act 291, Imd. Eff. Dec. 22, 1986 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988 ;-- Am. 1995, Act 191, Imd. Eff. Nov. 7, 1995 ;-- Am. 1996, Act 220, Eff. Aug. 15, 1996 ;-- Am. 2004, Act 490, Imd. Eff. Dec. 28, 2004
**Compiler's Notes:** Section 4 of Act 220 of 1996, which amendatory act amended this section, provides:“Section 4. (1) This amendatory act shall not take effect unless submitted to a vote of the official delegates who are certified as provided for in section 45 of the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being section 38.1545 of the Michigan Compiled Laws, and ratified by a 2/3 majority of the delegates actually voting on the question. The question of adoption of this amendatory act shall be submitted by certified mail to the delegates as certified to the most recent annual meeting of the municipal employees retirement system or, if no such delegates were certified or if previously certified delegates are no longer employed, then those delegates as certified by the participating municipality or participating court within 60 days after the enactment of this amendatory act. To be valid, each delegate's vote shall be received at the place designated by the retirement system no later than 75 days from the date of enactment of this amendatory act. The question shall be submitted in substantially the following form:“Shall Act No. _____ of the Public Acts of 1996, entitled 'An act to amend the municipal employees retirement act of 1984', providing for the retirement system to become a public corporation be adopted? Yes_____No_____”.(2) The retirement board of the municipal employees retirement system shall certify in writing the results of the voting on the question and file the certification with the secretary of state not later than the fifth business day following the tally of the votes. If a 2/3 majority of the delegates voting on the question approve the adoption of this amendatory act, the provisions of this amendatory act shall become effective on the date that is 10 calendar days after the filing of the certification with the secretary of state, which date shall be set forth in the filing and shall be known as the certification date.”The official tally of the vote on the question having occurred at the Special Meeting of the Board held on August 1, 1996, resulting in a determination that more than a two-thirds majority of the delegates voting on the question approved the adoption of Act 220 of 1996, a certification of the results of the voting was filed with the Secretary of State on August 5, 1996. The certification provided that the effective date of Act 220 of 1996 shall be August 15, 1996, which date shall be officially known as the

“certification date.”

### 38.1502b Definitions; M.

Sec. 2b.

(1) "Member" means an individual who is included in the membership of the retirement system, as determined by the retirement board.

(2) "Municipality" means 1 or more of the following:

(a) A county, county road commission, city, village, or township.

(b) A public corporation or instrumentality established by 1 or more counties, cities, villages, or townships.

(c) A public corporation or instrumentality charged by law with the performance of a governmental function and whose jurisdiction is coextensive with 1 or more counties, cities, villages, or townships.

(d) A political subdivision located in this state or located in this and another adjacent state of the United States, including, but not limited to, the entities named in subdivision (a), (b), or (c), or any combination of those units.

(e) A political subdivision located in this state and a metropolitan government borough, or other political subdivision of the province of Ontario, an agency of the United States, or a similar entity of adjacent states of the United States and the province of Ontario.

(f) A state university, community college, or junior college whose employees are not public school employees who are members under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(g) Any municipal corporation as defined in section 1(a) of 1951 PA 35, MCL 124.1, or other governmental entity that is eligible to join the retirement system and participate in any program under this act, as determined by the retirement board.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988 ;-- Am. 1989, Act 51, Imd. Eff. June 12, 1989 ;-- Am. 1990, Act 99, Imd. Eff. June 7, 1990 ;-- Am. 1992, Act 63, Imd. Eff. May 22, 1992 ;-- Am. 1996, Act 220, Eff. Aug. 15, 1996 ;-- Am. 2004, Act 490, Imd. Eff. Dec. 28, 2004

**Compiler's Notes:** Section 4 of Act 220 of 1996, which amendatory act amended this section, provides:“Section 4. (1) This amendatory act shall not take effect unless submitted to a vote of the official delegates who are certified as provided for in section 45 of the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being section 38.1545 of the Michigan Compiled Laws, and ratified by a 2/3 majority of the delegates actually voting on the question. The question of adoption of this amendatory act shall be submitted by certified mail to the delegates as certified to the most recent annual meeting of the municipal employees retirement system or, if no such delegates were certified or if previously certified delegates are no longer employed, then those delegates as certified by the participating municipality or participating court within 60 days after the enactment of this amendatory act. To be valid, each delegate's vote shall be received at the place designated by the retirement system no later than 75 days from the date of enactment of this amendatory act. The question shall be submitted in substantially the following form:“Shall Act No. _____ of the Public Acts of 1996, entitled 'An act to amend the municipal employees retirement act of 1984', providing for the retirement system to become a public corporation be adopted? Yes_____No_____”.(2) The retirement board of the municipal employees retirement system shall certify in writing the results of the voting on the question and file the certification with the secretary of state not later than the fifth business day following the tally of the votes. If a 2/3 majority of the delegates voting on the question approve the adoption of this amendatory act, the provisions of this amendatory act shall become effective on the date that is 10 calendar days after the filing of the certification with the secretary of state, which date shall be set forth in the filing and shall be known as the certification date.”The official tally of the vote on the question having occurred at the Special Meeting of the Board held on August 1, 1996, resulting in a determination that more than a two-thirds majority of the delegates voting on the question approved the adoption of Act 220 of 1996, a certification of the results of the voting was filed with the Secretary of State on August 5, 1996. The certification provided that the effective date of Act 220 of 1996 shall be August 15, 1996, which date shall be officially known as the “certification date.”

### 38.1502c Definitions; P to V.

Sec. 2c.

(1) "Participating court" means a judicial circuit court, a judicial district court, or a judicial probate court that has elected to be governed by the provisions of this act.

(2) "Participating municipality" means a municipality that has elected to be governed by the provisions of this act. Two or more municipalities may enter into an agreement with each other and the retirement system to participate as a combined unit.

(3) "Public corporation" means the retirement system on and after the certification date, which corporation is an

instrumentality of the participating municipalities and participating courts.

(4) "Retirement board" means the retirement board provided for in section 36 to administer the retirement system.

(5) "Retirement system" or "system" means the municipal employees retirement system established by former Act No. 135 of the Public Acts of 1945 and continued and restated by this act.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988 ;-- Am. 1989, Act 51, Imd. Eff. June 12, 1989 ;-- Am. 1996, Act 220, Eff. Aug. 15, 1996

**Compiler's Notes:** Section 4 of Act 220 of 1996, which amendatory act amended this section, provides:"Section 4. (1) This amendatory act shall not take effect unless submitted to a vote of the official delegates who are certified as provided for in section 45 of the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being section 38.1545 of the Michigan Compiled Laws, and ratified by a 2/3 majority of the delegates actually voting on the question. The question of adoption of this amendatory act shall be submitted by certified mail to the delegates as certified to the most recent annual meeting of the municipal employees retirement system or, if no such delegates were certified or if previously certified delegates are no longer employed, then those delegates as certified by the participating municipality or participating court within 60 days after the enactment of this amendatory act. To be valid, each delegate's vote shall be received at the place designated by the retirement system no later than 75 days from the date of enactment of this amendatory act. The question shall be submitted in substantially the following form:"Shall Act No. _____ of the Public Acts of 1996, entitled 'An act to amend the municipal employees retirement act of 1984', providing for the retirement system to become a public corporation be adopted? Yes_____No_____".(2) The retirement board of the municipal employees retirement system shall certify in writing the results of the voting on the question and file the certification with the secretary of state not later than the fifth business day following the tally of the votes. If a 2/3 majority of the delegates voting on the question approve the adoption of this amendatory act, the provisions of this amendatory act shall become effective on the date that is 10 calendar days after the filing of the certification with the secretary of state, which date shall be set forth in the filing and shall be known as the certification date."The official tally of the vote on the question having occurred at the Special Meeting of the Board held on August 1, 1996, resulting in a determination that more than a two-thirds majority of the delegates voting on the question approved the adoption of Act 220 of 1996, a certification of the results of the voting was filed with the Secretary of State on August 5, 1996. The certification provided that the effective date of Act 220 of 1996 shall be August 15, 1996, which date shall be officially known as the "certification date."

### 38.1503-38.1510a Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed sections pertained to credited service.

### 38.1511 Repealed. 1986, Act 291, Imd. Eff. Dec. 22, 1986.

### 38.1512-38.1535 Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed sections pertained to benefit programs.

### 38.1536 Retirement board; creation; retirement system as public corporation; powers and duties; administrative functions; membership; rules of procedure; record of proceedings; quorum; voting; term of office; oath; expenses; absence of member from work; vacancy; chairperson and chairperson pro-tem; chief executive officer.

Sec. 36.

(1) A retirement board is created to administer this act. Before August 15, 1996, the retirement board shall operate within the department of management and budget. After August 14, 1996, the retirement system is a public corporation and does not operate within the executive branch of this state.

(2) After August 14, 1996, subject to the protecting local government retirement and benefits act, the retirement

board has all of the following powers and duties:

(a) The retirement board shall determine and establish all of the provisions of the retirement system affecting benefit eligibility, benefit programs, contribution amounts, and the election of municipalities, judicial circuit courts, judicial district courts, and judicial probate courts to be governed by the provisions of the retirement system. The retirement board shall establish all retirement system provisions. As of 12:01 a.m. on August 15, 1996, the retirement system provisions must not differ materially from the defined benefit provisions that are in effect under this act at 11:59 p.m. August 14, 1996. This subdivision does not limit the retirement board's authority after August 15, 1996 to establish additional programs, including, but not limited to, defined benefit, defined contribution, ancillary benefits, health and welfare benefits, and other postemployment benefit programs. The retirement board may adopt the provisions of the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, on behalf of the employees of the retirement board.

(b) The retirement board has the exclusive authority and full responsibility to employ and pay for all professional services, including, but not limited to, actuarial, investment, legal, accounting, and any other services that the retirement board considers necessary for the proper operation of the retirement system. The power granted to the retirement board in this subdivision includes complete control of the procurement process.

(c) The retirement board shall appoint a chief executive officer and any other employees for which the retirement board establishes positions. The retirement board shall establish the compensation of all persons appointed by the board. After August 14, 1996, a person employed by the public corporation is not an employee of this state.

(d) The retirement board shall arrange for an annual actuarial valuation and report of the actuarial soundness of each participating municipality and court to be prepared by an independent actuary based on data compiled and supplied by employees of the retirement system. The retirement board shall adopt actuarial tables, assumptions, and formulas after consultation with the actuary.

(e) The retirement board shall arrange for annual audits of the records and accounts of the retirement system by a certified public accountant or by a firm of certified public accountants under generally accepted auditing standards and the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(f) The retirement board shall prepare an annual report for each fiscal year in compliance with generally accepted accounting principles. The report must include information regarding the financial, actuarial, and other activities of the retirement system during the fiscal year. The retirement board shall furnish a copy of the annual report to the governor and a copy in print or electronic format to each house of the legislature, each participating municipality, and each participating court. The retirement board shall make the report available to all members on request. The report must also include a review of the actuarial valuation required under subdivision (d), if available.

(g) The retirement board shall appoint an attorney to be the legal advisor of the board and to represent the board in all proceedings.

(h) The retirement board shall appoint or employ custodians of the assets of the retirement system. The custodians shall perform all duties necessary and incidental to the custodial responsibility and make disbursements of authorized retirement system payments from the funds of the retirement system.

(i) The retirement board shall perform other functions that are required for the execution of this act.

(j) The retirement board shall establish the time and location of the meetings of the retirement board and the time and location of the annual meeting of the retirement system, consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) Before August 15, 1996, the executive organization act of 1965, 1965 PA 380, MCL 16.101 to 16.608, and the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, govern the administrative functions of the retirement system. However, any provision of law in actual conflict with 1996 PA 220 does not apply.

(4) After August 14, 1996, the retirement board consists of the following 9 members, each of whom, excepting the retiree member and the retirement board appointees, must be from a different county at the time of appointment:

(a) Two members appointed by the retirement board who have knowledge or experience in retirement systems, administration of retirement systems, or investment management or advisory services.

(b) One member who is a retiree of the system appointed by the board.

(c) Three members of the retirement system who are officers of participating municipalities or courts, who must be designated as officer board members.

(d) Three employee members of the retirement system who are not officers of a participating municipality or court, who must be designated as employee board members.

(5) The retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. Five members of the retirement board constitute a quorum at a meeting of the retirement board and at least 5 concurring votes are necessary for any decision by the retirement board. Each member of the retirement board is entitled to 1 vote on each question before the retirement board.

(6) The regular term of office of members of the retirement board is 3 years. Each member of the retirement board shall take an oath of office before assuming the duties of the position. Members of the retirement board shall serve without compensation with respect to their duties, but must be reimbursed by the retirement system for their actual and necessary expenses incurred in the performance of their duties. A participating municipality or court

employing a member of the retirement board shall treat absences from work because of retirement board business in a manner that the individual does not suffer loss of pay or benefits.

(7) A vacancy occurs on the retirement board on the occurrence of any of the following events:

(a) An officer board member ceases to be eligible for nomination as an officer board member.

(b) An employee board member ceases to be eligible for nomination as an employee board member.

(c) Failure to attend 3 consecutive scheduled meetings of the retirement board, unless excused for cause by majority vote of the board members attending the meeting.

(8) The retirement system board shall fill a vacancy occurring on the retirement board at least 120 days before the expiration of a term of office. Board appointments under this subsection are for the period ending on the December 31 next following the date of the vacancy. For the officer board members and employee board members, a replacement for any further portion of the unexpired term must be filled under section 45. For the 2 appointed board members and the retiree board member, a replacement for any further portion of the unexpired term must be filled under subsection (4).

(9) The retirement board shall select from its members a chairperson and a chairperson pro-tem.

(10) The retirement board shall employ a chief executive officer. The chief executive officer shall do all of the following:

(a) Manage and administer the retirement system under the supervision and direction of the retirement board.

(b) Invest the assets of the retirement system, as directed by the retirement board, consistent with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141.

(c) Annually prepare and submit to the retirement board for review, amendment, and adoption an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year.

(d) Perform other duties as the retirement board delegates to the chief executive officer.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988 ;-- Am. 1996, Act 220, Eff. Aug. 15, 1996 ;-- Am. 2004, Act 490, Imd. Eff. Dec. 28, 2004 ;-- Am. 2017, Act 213, Imd. Eff. Dec. 20, 2017

**Compiler's Notes:** Section 4 of Act 220 of 1996, which amendatory act amended this section, provides:“Section 4. (1) This amendatory act shall not take effect unless submitted to a vote of the official delegates who are certified as provided for in section 45 of the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being section 38.1545 of the Michigan Compiled Laws, and ratified by a 2/3 majority of the delegates actually voting on the question. The question of adoption of this amendatory act shall be submitted by certified mail to the delegates as certified to the most recent annual meeting of the municipal employees retirement system or, if no such delegates were certified or if previously certified delegates are no longer employed, then those delegates as certified by the participating municipality or participating court within 60 days after the enactment of this amendatory act. To be valid, each delegate's vote shall be received at the place designated by the retirement system no later than 75 days from the date of enactment of this amendatory act. The question shall be submitted in substantially the following form:“Shall Act No. _____ of the Public Acts of 1996, entitled 'An act to amend the municipal employees retirement act of 1984', providing for the retirement system to become a public corporation be adopted?Yes _____No _____”.(2) The retirement board of the municipal employees retirement system shall certify in writing the results of the voting on the question and file the certification with the secretary of state not later than the fifth business day following the tally of the votes. If a 2/3 majority of the delegates voting on the question approve the adoption of this amendatory act, the provisions of this amendatory act shall become effective on the date that is 10 calendar days after the filing of the certification with the secretary of state, which date shall be set forth in the filing and shall be known as the certification date.”The official tally of the vote on the question having occurred at the Special Meeting of the Board held on August 1, 1996, resulting in a determination that more than a two-thirds majority of the delegates voting on the question approved the adoption of Act 220 of 1996, a certification of the results of the voting was filed with the Secretary of State on August 5, 1996. The certification provided that the effective date of Act 220 of 1996 shall be August 15, 1996, which date shall be officially known as the “certification date.”

### 38.1536a Repealed. 2004, Act 490, Imd. Eff. Dec. 28, 2004.

**Compiler's Notes:** The repealed section pertained to promulgation of administrative rules.

### 38.1537, 38.1538 Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed sections pertained to annual reports, tables, data, and information.

**38.1539 Retirement board as trustees of money and other assets; investments; investment counsel; purpose of investments; discretionary authority.**

Sec. 39.

(1) The retirement board shall be the trustees of the money and other assets of the retirement system. The board shall have full power and authority to invest and reinvest the money and other assets of the retirement system subject to all terms, conditions, limitations, and restrictions imposed on the investment of assets of public employee retirement systems by Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws. The retirement board may employ outside investment counsel to advise the board in the making and disposition of investments.

(2) All money and other assets of the retirement system shall be held and invested for the sole purpose of meeting disbursements authorized in accordance with the provisions of this act and shall be used for no other purpose. In exercising its discretionary authority with respect to the management of the money and other assets of the retirement system, the retirement board shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character with like aims.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988

**38.1540 Prohibited conduct.**

Sec. 40.

Members of the retirement board and employees of the retirement system are prohibited from:

(a) Having any beneficial interest, direct or indirect, in any investment of the retirement system.

(b) Being an endorser or obligor, or providing surety, for any money loaned to or borrowed from the retirement system.

(c) Borrowing any of the money or other assets of the retirement system.

(d) Receiving any pay or emolument from any individual or organization, other than compensation paid by the retirement system, with respect to investments of the retirement system.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985

**38.1541-38.1544a Repealed. 1996, Act 220, Eff. Aug. 15, 1996.**

**Compiler's Notes:** The repealed sections pertained to election to participate or change benefit and contribution programs.

**38.1545 Annual meeting; selection of members to retirement board; transaction of business; notice of meeting; certification of delegates; conduct of election; nominating procedures; referendum.**

Sec. 45.

(1) The retirement board shall call an annual meeting of the retirement system for the purpose of selecting members of the retirement board and the transaction of such other business as the retirement board determines. Notice of the annual meeting shall be sent to each participating municipality and participating court, by registered mail, at least 30 days before the date of the meeting. Notice of the annual meeting shall be sent to each retiree at least 30 days before the date of the meeting.

(2) The governing body of each participating municipality shall certify the names of 2 delegates to the annual

meeting. One delegate shall be a member who is an officer of the participating municipality, selected by the governing body of the participating municipality. The other delegate shall be a member who is not an officer of the participating municipality, elected by the member employees of the participating municipality. The election shall be by secret ballot and shall be conducted by an officer of the participating municipality. The election shall be conducted in a manner that affords each member employee an opportunity to vote.

(3) The chief judge of each participating court shall certify the names of 2 delegates to the annual meeting. One delegate shall be a member who is an officer of the participating court, selected by the chief judge of the participating court. The other delegate shall be a member who is not an officer of the participating court, elected by the member employees of the participating court. The election shall be by secret ballot and shall be conducted by an officer of the participating court. The election shall be conducted in a manner that affords each member employee an opportunity to vote.

(4) The nomination of candidates for election to the retirement board shall be made pursuant to procedures established by the retirement board and adopted by the delegates to an annual meeting of the retirement system. A nomination for the position of officer board member shall be made by a member who is an officer of a participating municipality or of a participating court. A nomination for the position of employee board member shall be made by a member who is not an officer of a participating municipality or of a participating court.

(5) The retirement board shall hold a referendum of the assembled delegates to elect members of the retirement board. The referendum shall be conducted pursuant to procedures established by the retirement board and adopted by the delegates to an annual meeting of the retirement system. An individual elected to the retirement board shall become a member of the retirement board on the January 1 immediately following the referendum.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985 ;-- Am. 1988, Act 500, Imd. Eff. Dec. 29, 1988 ;-- Am. 1996, Act 220, Eff. Aug. 15, 1996
**Compiler's Notes:** Section 4 of Act 220 of 1996, which amendatory act amended this section, provides:“Section 4. (1) This amendatory act shall not take effect unless submitted to a vote of the official delegates who are certified as provided for in section 45 of the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being section 38.1545 of the Michigan Compiled Laws, and ratified by a 2/3 majority of the delegates actually voting on the question. The question of adoption of this amendatory act shall be submitted by certified mail to the delegates as certified to the most recent annual meeting of the municipal employees retirement system or, if no such delegates were certified or if previously certified delegates are no longer employed, then those delegates as certified by the participating municipality or participating court within 60 days after the enactment of this amendatory act. To be valid, each delegate's vote shall be received at the place designated by the retirement system no later than 75 days from the date of enactment of this amendatory act. The question shall be submitted in substantially the following form:“Shall Act No. _____ of the Public Acts of 1996, entitled 'An act to amend the municipal employees retirement act of 1984', providing for the retirement system to become a public corporation be adopted? Yes_____No_____”.(2) The retirement board of the municipal employees retirement system shall certify in writing the results of the voting on the question and file the certification with the secretary of state not later than the fifth business day following the tally of the votes. If a 2/3 majority of the delegates voting on the question approve the adoption of this amendatory act, the provisions of this amendatory act shall become effective on the date that is 10 calendar days after the filing of the certification with the secretary of state, which date shall be set forth in the filing and shall be known as the certification date.”The official tally of the vote on the question having occurred at the Special Meeting of the Board held on August 1, 1996, resulting in a determination that more than a two-thirds majority of the delegates voting on the question approved the adoption of Act 220 of 1996, a certification of the results of the voting was filed with the Secretary of State on August 5, 1996. The certification provided that the effective date of Act 220 of 1996 shall be August 15, 1996, which date shall be officially known as the “certification date.”

### 38.1545a-38.1554 Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed sections pertained to disposition of reserves.

### 38.1545b Contested case hearing.

Sec. 45b.

The retirement board shall provide for a hearing on written request of a person, participating court, or participating municipality aggrieved by a decision of the retirement system. The hearing under this section must be conducted as a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288, and policies or procedures adopted by the retirement board, and a final order of a hearing under this section is subject to chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

**History:** Add. 2022, Act 222, Imd. Eff. Oct. 14, 2022
**Compiler's Notes:** Enacting section 1 of Act 222 of 2022 provides:"Enacting section 1. This amendatory act is intended to be retroactive and applies retroactively effective after August 14, 1996."

### 38.1555 Repeal of MCL 38.601 to 38.669.

Sec. 55.

Act No. 135 of the Public Acts of 1945, being sections 38.601 to 38.669 of the Michigan Compiled Laws, is repealed.

**History:** 1984, Act 427, Imd. Eff. Jan. 2, 1985

### 38.1556 Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed section pertained to retirement system as qualified pension plan and trust as exempt organization.

### 38.1557 Repealed. 1992, Act 63, Eff. May 22, 1993.

**Compiler's Notes:** The repealed section pertained to a municipality participating in the retirement system.

### 38.1558 Repealed. 1996, Act 220, Eff. Aug. 15, 1996.

**Compiler's Notes:** The repealed section pertained to recognition of prior service credit.

## STATE POLICE RETIREMENT ACT OF 1986

## Act 182 of 1986

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 technology, 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 technology, management, and budget, and certain state officers; and to repeal certain acts and parts of acts.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2015, Act 168, Imd. Eff. Nov. 3, 2015

*The People of the State of Michigan enact:*

### 38.1601 Short title.

Sec. 1.

This act shall be known and may be cited as the "state police retirement act of 1986".

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1602 Meanings of words and phrases.

Sec. 2.

For the purposes of this act, the words and phrases defined in sections 3 and 4 have the meanings ascribed to them in those sections.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1603 Definitions; B to L.

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 technology, 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, that 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 that 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 the 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 that is not so includable.

(10) "Final average compensation" means, except as otherwise provided in this subsection, 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). Except as otherwise provided in this subsection, for 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. Beginning with the effective date of the amendatory act that added section 42a, for a member who first became a member on or after June 10, 2012, final average compensation means the average salary for the last 5 years of service for which the member was compensated as defined in subsection (14). Average annual salary includes only the following compensation items:

(a) Beginning with the effective date of the amendatory act that added section 42a, for a member who first became a member before June 10, 2012, only the following compensation items:

(i) 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.

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

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

(iv) 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.

(v) 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.

(vi) Longevity pay equal to 2 full years.

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

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

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

(x) 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.

(xi) Beginning May 1, 2009, the value of temporary layoff hours. As used in this subparagraph, "temporary layoff hours" means hours attributable to the layoff of a member if the layoff does not exceed 1 month and has a fixed, predetermined, and announced recall date.

(b) Beginning with the effective date of the amendatory act that added section 42a, for a member who first became a member on or after June 10, 2012, only the following compensation items:

(i) Regular salary paid for the last 5 years of service, including, but not limited to, that salary that is deferred pursuant to a state deferred compensation program.

(ii) Shift differential.

(iii) Gross pay adjustments paid affecting the last 5 years of service, including compensatory time and emergency response compensation.

(iv) 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.

(v) Longevity pay equal to 5 full years.

(vi) Bomb squad pay paid for the last 5 years of service.

(vii) Post 29 freeway premium paid for the last 5 years of service.

(viii) On-call pay paid for the last 5 years of service.

(ix) 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.

(x) The value of temporary layoff hours. As used in this subparagraph, "temporary layoff hours" means hours attributable to the layoff of a member if the layoff does not exceed 1 month and has a fixed, predetermined, and announced recall date.

(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 under 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.

(14) "Last 5 years of service" means the 5-year period immediately preceding the member's last day of service or that period of 5 consecutive years of service with the department of state police immediately preceding the date the duty disability occurred according to the medical examinations conducted under section 29.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1989, Act 191, Imd. Eff. Aug. 25, 1989 ;-- Am. 1995, Act 192, Imd. Eff. Nov. 7, 1995 ;-- Am. 2000, Act 374, Imd. Eff. Jan. 2, 2001 ;-- Am. 2004, Act 50, Eff. Apr. 22, 2004 ;-- Am. 2004, Act 83, Imd. Eff. Apr. 22, 2004 ;-- Am. 2008, Act 366, Imd. Eff. Dec. 23, 2008 ;-- Am. 2010, Act 220, Imd. Eff. Dec. 9, 2010 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1604 Definitions; M to S.

Sec. 4.

(1) "Member", except where the context otherwise requires, means an employee of the department of state police who has subscribed to the constitutional oath of office.

(2) "Officer" means a nonexclusively represented member of the retirement system.

(3) "Qualified participant" means an individual who first becomes a member on or after June 10, 2012 and who is also a participant of Tier 2.

(4) "Regular interest" means a rate or rates per annum, compounded annually, as the retirement board determines. For the purposes of employee refunds, the interest rate payable must not exceed 4% per annum, compounded annually.

(5) "Retirant" means a member who separates from service and retires with a retirement allowance payable from the appropriate reserve of the retirement system.

(6) "Retirement allowance" means the annual amount, payable monthly, to which a retirant, retirement allowance beneficiary, or refund beneficiary is entitled under this act.

(7) "Retirement allowance beneficiary" means a person who is being paid or has entitlement to the payment of a retirement allowance in the event of the death of a member, deferred member, or retirant.

(8) "Retirement board" means the retirement board created in section 6.

(9) "Retirement system" means the system of benefits for members and qualified participants of the department of state police and their survivors and beneficiaries provided by this act.

(10) "Surviving spouse" means the spouse at the time of death of the member or retirant.

(11) "Tier 1" means the retirement plan available to a member under this act.

(12) "Tier 2" means the retirement plan established pursuant to section 401(k) of the internal revenue code, 26 USC 401, that is available to qualified participants under sections 62 to 74.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2004, Act 83, Imd. Eff. Apr. 22, 2004 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1605 Michigan state police retirement system; creation.

Sec. 5.

A Michigan state police retirement system is created for the state police officers who have subscribed to the constitutional oath of office.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1606 State police retirement board; creation; appointment, qualifications, and terms of members.

Sec. 6.

(1) Effective January 1, 1987, the state police retirement board is created within the department and shall consist of the following 9 members:

(a) One officer member of the retirement system having the rank of sergeant or below, to be selected from a list of at least 3 names submitted by the exclusive bargaining representative of those officers.

(b) One officer member of the retirement system having the rank of lieutenant or above from a list of at least 3 names which shall be the individuals who receive the greatest number of votes as the result of an election involving those members of the retirement system having the rank of lieutenant and above.

(c) One retirant.

(d) One member of the general public who shall have experience in the insurance, actuarial, or institutional investment field, and who is not an employee of the department of state police or a member or retirant of this system.

(e) The director of the department of state police or his or her authorized representative.

(f) The attorney general or his or her authorized representative.

(g) The state treasurer or his or her authorized representative.

(h) The deputy legislative auditor general or his or her authorized representative.

(i) The state employer or his or her authorized representative.

(2) Members of the retirement board described in subsection (1)(a) to (d) shall be appointed by the governor for terms of 3 years each, except that of the members first appointed, 1 shall serve for a term of 1 year, 2 shall serve for terms of 2 years, and 1 shall serve for a term of 3 years.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1607 State police retirement board; oath of member; conducting business at public meeting; notice; quorum; failure of member to attend 3 consecutive meetings; availability of writings to public; rules.

Sec. 7.

(1) A member of the retirement board, upon appointment, shall take an oath of office, which shall be filed immediately in the office of the secretary of state.

(2) The business which the retirement board may perform shall be conducted at a public meeting of the retirement board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A majority of the retirement board constitutes a quorum for the transaction of business at a meeting of the board. A member of the retirement board who fails to attend 3 consecutive regularly scheduled meetings of the board, without valid excuse, shall be considered as having resigned from retirement board membership, and the retirement board shall declare by resolution the member's office vacated as of the date of adoption of the resolution.

(3) A writing prepared, owned, used, in the possession of, or retained by the retirement board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(4) The retirement board may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the implementation and administration of this act.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1608 State police retirement board; per diem compensation; reimbursement of expenses; maximum number of meetings.**

Sec. 8.

The per diem compensation of the retirement board and the schedule for reimbursement of expenses incurred in attending meetings of the retirement board and in performing the required services of the members shall be established annually by the legislature. The retirement board shall not have more than 12 meetings in a calendar year.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1609 State treasurer as treasurer of retirement system; investment authority; fiduciary responsibility; limitations on investment of funds; deposit of funds; disposition of income earned by reserves.**

Sec. 9.

(1) The state treasurer shall be treasurer of the retirement system and shall have investment authority, including the custodianship of the funds of the retirement system, and shall have fiduciary responsibility with regard to the investment of funds from the reserves of the retirement system. The investment of the funds of the retirement system shall be subject to the limitations provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws.

(2) The state treasurer shall deposit the funds of the retirement system in the same manner and subject to the law governing the deposit of state funds by the treasurer. Income earned by the retirement system's reserves shall be credited to the respective reserves under this act that have earned the income.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1989, Act 191, Imd. Eff. Aug. 25, 1989

**38.1610 Warrants.**

Sec. 10.

The retirement system shall draw its warrants upon the state treasurer, payable out of the reserves of the retirement system, for the payment of retirement allowances, the payment of salaries and wages, and other expenses necessary in the administration of the retirement system.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1611 Engagement of actuary; annual valuation; experience investigation and risk assumptions; report.**

Sec. 11.

(1) The retirement board, in consultation with the department, shall engage an actuary, in conformance with section 261 of the management and budget act, 1984 PA 431, MCL 18.1261.

(2) The actuary shall prepare an annual valuation of the assets, liabilities, financial condition, and contribution rate of the retirement system, upon information supplied by the department.

(3) The retirement board and the department shall conduct and review an experience investigation study and adopt risk assumptions on which actuarial valuations are to be based, after consultation with the actuary, and the

state treasurer. The experience investigation study must be periodically reviewed at least once every 5 years.

(4) Every April 1 following a periodic review of risk assumptions under subsection (3), the office of retirement services on behalf of the department and the state treasurer shall collaborate to submit a report to the senate majority leader, the speaker of the house of representatives, the senate and house of representatives appropriations committees, the senate and house fiscal agencies, and the department of state police. A report required under this subsection must be published on the office of retirement services's website and include at least all of the following:

(a) Forecasted rate of return on investments at all of the following probability levels:

(i) 5%.

(ii) 25%.

(iii) 50%

(iv) 75%.

(v) 95%.

(b) The actual rate of return on investments for 10-, 15-, and 20-year time intervals.

(c) Mortality assumptions.

(d) Retirement age assumptions.

(e) Payroll growth assumptions.

(f) Any other assumptions that have a material impact on the financial status of the retirement system.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1612 State police retirement board; chairperson; executive secretary.

Sec. 12.

The retirement board shall elect from its membership a chairperson who shall take office immediately on election and serve until a successor is elected. The director of the office of retirement service, department of technology, management, and budget, is the executive secretary of the retirement system.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1613 Summary of fiscal transactions.

Sec. 13.

By April 15 of each year, the department shall furnish to the governor, the legislature, each retirant or beneficiary of a deceased retirant, and each member, a summary of the fiscal transactions of the retirement system for the last completed fiscal year. The summary shall contain at least the following information from the actuarial and financial statements:

(a) A statement of assets and liabilities.

(b) A statement of investments by, and amount earned in, each category.

(c) A statement of revenues and expenditures.

(d) A statement of the estimated number of members having vested pension benefits for which the retirement system is liable.

(e) Other information the department or retirement board considers necessary.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1613a Correction of error; benefit payment adjustment.

Sec. 13a.

If a change or error in the records of the retirement system results in a retirant, retirement allowance beneficiary, or refund beneficiary receiving from the retirement system more or less than the retirant, retirement allowance beneficiary, or refund beneficiary would have been entitled to receive had the records been correct, the retirement system shall as far as practical correct the error, and may adjust the payment to provide an actuarial equivalent of the benefit to which the retirant, retirement allowance beneficiary, refund beneficiary, estate, or legal representative was correctly entitled. The retirement system shall not make an adjustment in benefits for an error totaling $20.00 or less annually.

**History:** Add. 2000, Act 374, Imd. Eff. Jan. 2, 2001

**38.1614 Funding objective of retirement system; annual level percentage of payroll contribution rate; submission of differences to legislature for appropriation; allocation and deposit of funds; pension and retiree health care payroll growth assumption rate; normal cost contribution rate.**

Sec. 14.

(1) The funding objective of the retirement system is to establish and receive contributions during each fiscal year that are sufficient to fully cover the actuarial cost of benefits likely to be paid on account of services rendered by members during the fiscal year, the normal cost requirements of the retirement system, and finance the unfunded actuarial costs of benefits likely to be paid on account of service rendered before the fiscal year, the unfunded actuarial accrued liability of the retirement system, and health, dental, and vision insurance.

(2) Subject to subsections (5) to (7), the annual level percentage of payroll contribution rate must be actuarially determined using experience assumptions and level percent of payroll actuarial cost methods adopted by the retirement board and the department pursuant to an annual actuarial valuation, which must be sufficient to finance benefits being provided and to be provided by the retirement system.

(3) Subject to subsections (5) to (7), for differences occurring in fiscal years beginning on or after October 1, 2001, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual contribution rate described in subsection (2), if any, may be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year and a minimum of 25% of the remaining difference must be submitted in the executive budget to the legislature for appropriation in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest must be included for each year that a portion of the remaining difference is carried forward. The interest rate must equal the actuarially assumed rate of investment return for the state fiscal year in which payment is made.

(4) For each fiscal year that begins on or after October 1, 2003, if the actuarial valuation prepared under this section for each fiscal year demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions exceeds the actuarial present value of benefits, the amount based on the annual level percent of payroll contribution rate under subsections (1) and (2) may be deposited into the health advance funding subaccount created by section 42.

(5) Beginning with the state fiscal year ending September 30, 2022 until the pension and retiree health care payroll growth assumption rate is zero, the payroll growth assumption rate must be reduced by 50 basis points. Beginning with the state fiscal year ending September 30, 2022, the office of retirement services within the department of technology, management, and budget and the retirement board may agree to reduce the rate described in this subsection by any number of additional basis points.

(6) Beginning with the state fiscal year ending September 30, 2019 and for each subsequent fiscal year, the normal cost contribution rate must not be less than the normal cost contribution rate in the immediately preceding fiscal year. Additionally, the employer portion of the contribution rate must not be less than the employer portion of the contribution rate in the immediately preceding fiscal year.

(7) Subject to this subsection, beginning with the state fiscal year ending September 30, 2019 and for each subsequent fiscal year until the unfunded actuarial accrued liability is paid off, the unfunded actuarial accrued liability contribution sum and due payable must not be less than the unfunded actuarial accrued liability contribution sum and due payable in the immediately preceding fiscal year. The unfunded actuarial accrued liability must be paid off no later than September 30, 2038. Additionally, the employer portion of the unfunded actuarial accrued liability contribution sum and due payable must not be less than the employer portion of the unfunded actuarial accrued liability contribution sum and due payable in the immediately preceding fiscal year.

(8) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1686, the benefits that are required to be paid from that fund must be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that must be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1989, Act 191, Imd. Eff. Aug. 25, 1989 ;-- Am. 2000, Act 374, Imd. Eff. Jan. 2, 2001 ;-- Am. 2004, Act 50, Eff. Apr. 22, 2004 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1614a Intent; retirement system as qualified pension plan and trust as exempt organization; administration; employer-financed benefit limitation; use and investment of assets; return of post-tax member contributions; beginning date of distributions; termination of retirement system; election to rollover to retirement plan; qualified military service.**

Sec. 14a.

(1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, 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, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system must 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 must 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 must 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 applies 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 must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must 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 must 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, apply to this act and must 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. Beginning October 1, 2010, a nonspouse beneficiary may elect to have any portion of an amount payable under this act that is an eligible rollover distribution treated as a direct rollover that will be paid in a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity described in section 408(a) or (b) of the internal

revenue code, 26 USC 408, that is established for the purpose of receiving a distribution on behalf of the beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity pursuant to section 402(c)(11) of the internal revenue code, 26 USC 402.

(8) Notwithstanding any other provision of this act, the compensation of a member of the retirement system must 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 is treated as having resumed and then terminated employment on account of death.

**History:** Add. 1995, Act 192, Imd. Eff. Nov. 7, 1995 ;-- Am. 2004, Act 50, Eff. Apr. 22, 2004 ;-- Am. 2008, Act 366, Imd. Eff. Dec. 23, 2008 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1615 Reserve for employee contributions; subaccounts; transfer of accumulated member contributions.

Sec. 15.

(1) The reserve for employee contributions is the account in which member contributions are accumulated and from which must be made refunds and transfers of accumulated member contributions. The retirement system shall maintain 1 or more separate subaccounts for each person having an interest in this account. Member contributions must be accumulated at regular interest to the subaccounts of the members.

(2) Accumulated member contributions must be transferred from the reserve for employee contributions to the reserve for retired benefit payments on the retirement or death of a member or deferred member.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1615a Mandatory contributions into the reserve for employee contributions.

Sec. 15a.

(1) Beginning with his or her first pay date and ending on the member's termination of employment, each member first employed on or after June 10, 2012 shall contribute an amount equal to 4% of his or her compensation to the reserve for employee contributions to provide for the amount of retirement allowance that is calculated only on the credited service and compensation received by that member.

(2) Beginning on October 1, 2012, and ending on the member's termination of employment, each member hired before June 10, 2012 who, on October 1, 2012, was a bargaining unit employee covered by the state police defined benefit retirement plan shall contribute an amount equal to 1% of his or her compensation to the reserve for employee contributions. Beginning on October 1, 2013, members described in this subsection shall contribute an additional amount equal to 1% of his or her compensation to the reserve for employee contributions.

(3) The retirement system and state budget director shall determine a method of deducting the contributions provided for in this section from the compensation of each member for each payroll and each payroll period.

(4) The state shall pick up the member contributions required under subsections (1) and (2). Contributions picked up must be treated as employer contributions in determining tax treatment under the internal revenue code. The state shall pay these member contributions from the same source of funds that is used in paying compensation to the member.

(5) A member is entitled to the benefit of all contributions made under this section in the same manner as provided under section 15.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1616 Reserve for employer contributions; transfer of accumulated employer contributions.

Sec. 16.

(1) The reserve for employer contributions is the account to which contributions by the state shall be credited.

(2) Accumulated employer contributions shall be transferred from the reserve for employer contributions to the reserve for retired benefit payments upon the retirement or death of a member or deferred member.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1617 Reserve for retired benefit payments; transfer between reserve for employer contributions and reserve for retired benefit payments.

Sec. 17.

(1) The reserve for retired benefit payments is the account from which shall be paid all retirement allowances and residual refunds of accumulated contributions.

(2) At the end of each year in which a biennial actuarial valuation is prepared, the balance in the reserve for retired benefit payments shall be brought into balance with the actuarial present value of retirement allowances in payment status by a transfer between the reserve for employer contributions and the reserve for retired benefit payments. The pending transfer shall be taken into account by the actuary when making the next biennial actuarial valuation.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1618 Reserve for casualty experience; initial casualty valuation as determining full funding reserve requirements; allocation from assets; retiree casualty payments; “casualty” defined.

Sec. 18.

(1) The reserve for casualty experience is the account in which shall be accumulated contributions by the state pursuant to actual and expected experience as determined by the actuarial valuations. The initial casualty valuation shall determine the full funding reserve requirements which shall be allocated from assets of the reserve. All retiree casualty payments shall be made from this account.

(2) For purposes of this section, the term "casualty" shall mean injury to or death of a member or vested former member.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1619 Reserve for undistributed investment income; amounts to be transferred; providing contingency reserves or meeting requirements of other reserve accounts; insufficient balance.

Sec. 19.

The reserve for undistributed investment income is the account to which is credited all interest, dividends, and other income from the investment of retirement system assets; all gifts, bequests, and rewards offered or due to the members of the department received by the retirement system; all unclaimed accumulated contributions and retirement allowances; and all other money received by the retirement system, the disposition of which is not specifically provided. There shall be transferred from the reserve for undistributed investment income all amounts required to credit interest to the reserve for employee contributions, reserve for employer contributions, and the reserve for retired benefit payments; and to fund the reserve for administrative expenses. Whenever the department determines the balance in the reserve for undistributed investment income is more than sufficient to cover current charges to the reserve, all or any part of the excess may be used to provide contingency reserves or to meet special requirements of the other reserve accounts of the retirement system. Whenever the balance in the reserve for undistributed investment income is insufficient to meet the current charges to the account, the amount of the insufficiency shall be transferred from the reserve for employer contributions.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1620 Administrative expenses; appropriation.

Sec. 20.

The expenses for the administration of the retirement system shall be paid from the reserve for administrative expenses account. There shall be appropriated annually from the reserve for undistributed investment income an amount sufficient to cover the necessary expenses of administering this act.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1621 Allocation of undistributed investment income; charging amounts allocated; allocation rates.

Sec. 21.

The department shall at least annually allocate all or a portion of undistributed investment income to the individual balances in the reserve for employee contributions, the reserve for employer contributions, and the reserve for retired benefit payments and on the aggregate balance in the reserve for excess casualty experience. The amounts allocated shall be charged to the reserve for undistributed investment income. The allocation rates shall be determined by the department. Allocation rates may vary by reserve account but shall be uniformly applied to each subaccount within a reserve account.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1622 Payment date of retirement allowance; payment upon cessation of retirement allowance.

Sec. 22.

Each retirement allowance payable under this act shall date from the first of the month following the month in which the applicant satisfies the age and service or other requirements for receiving the retirement allowance and terminates state service. A full month's retirement allowance shall be payable for the month in which a retirement allowance ceases.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1623 Employees of department of state police as members of retirement system; Tier 1 or Tier 2 plan; resignation, death, transfer, or dismissal of member; lump sum; transfer of unclaimed contributions.**

Sec. 23.

(1) Except as otherwise provided under 1935 PA 59, MCL 28.1 to 28.16, an employee of the department of state police who has subscribed to the constitutional oath of office is a member of this retirement system.

(2) A member of this retirement system who first becomes a member on or after June 12, 2012 is a member of the Tier 1 plan and also participates in the Tier 2 plan until the member terminates employment or retires and receives a retirement allowance calculated under section 24.

(3) A member who resigns, dies, is transferred to a position not covered by the retirement system, or is dismissed for a reason other than his or her retirement or breach of the public trust, on application is entitled to receive in a lump sum, payable to him or her or his or her legal representative if the member dies or is legally disabled, 100% of the contributions made into the reserve for employee contributions. Any unclaimed contributions must be transferred from the reserve for employee contributions to the reserve for retired benefit payments.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1624 Eligibility for retirement; application for retirement; mandatory retirement; amount of retirement allowance; death of retirant; appeal to retirement board; retirement allowance payment options; retirement allowance beneficiary; exception; written request.**

Sec. 24.

(1) Except as provided in section 24b and subject to subsection (14), a member who first became a member before June 10, 2012 and who has 25 years or more of credited service under this act or former 1935 PA 251, or both, may retire on his or her written application to the retirement board, stating a date, not less than 30 nor more than 90 days after the execution and filing of the application, he or she desires to retire. However, a member described in this subsection who becomes 56 years of age shall retire. A member retiring under this subsection is entitled to receive a retirement allowance equal to 60% of his or her final average compensation.

(2) Subject to subsection (4), if a retirant receiving a retirement allowance under subsection (1) dies, the retirement allowance must continue to be paid to the surviving spouse of the retirant for the rest of the spouse's life. If there is not a surviving spouse or on the spouse's death, the retirement allowance must be paid to the children under the age of 18 of the retirant, share and share alike. If the surviving spouse dies and there are not eligible children, the retirement system shall pay to the retirant's estate or his or her legal representative any residual accumulated contributions and interest made by the retirant into the fund.

(3) If the director of the department of state police orders the retirement of any member eligible to retire for reason or reasons other than having become 56 years of age, and that member is aggrieved by the order, the member affected by an order described in this subsection is entitled to appeal to the retirement board. An appeal must be in writing and filed with the retirement board within 30 days after receipt of the order of retirement. The retirement board shall set the appeal for hearing within 30 days after the filing of the appeal and shall review the facts as presented and determine whether the order of retirement will continue or be revoked.

(4) A member who first becomes a member on or after July 1, 2006 as a new bargaining unit employee shall elect to receive his or her retirement allowance under 1 of the payment options provided in this subsection. The election must be in writing and filed with the retirement board at least 15 days before the effective date of the retirement allowance except as provided for a disability retirant under sections 26, 27, and 28. The amount of retirement allowance under subdivision (b), (c), or (d) is the actuarial equivalent of the amount of retirement allowance under subdivision (a). The options are as follows:

(a) The retirant will be paid a straight retirement allowance for life computed under section 24. An additional retirement allowance payment will not be made on the retirant's death.

(b) The retirant will be paid a reduced retirement allowance for life with a provision that on the retirant's death, payment of the reduced retirement allowance will be continued throughout the lifetime of the retirement allowance beneficiary whom the member or deferred member designated in a writing filed with the retirement board at the time of election of this option. A member or deferred member may elect this option and designate a retirement allowance beneficiary under the conditions set forth in subsection (5).

(c) A retirant must be paid a reduced retirement allowance for life with the provision that on the retirant's death, payment of 1/2 of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(d) A retirant must be paid a reduced retirement allowance for life with the provision that on the retirant's death, payment of 75% of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(5) Except as otherwise provided in this section, the retirement allowance beneficiary selected under subsection (4)(b), (c), or (d) must not be changed on or after the effective date of the retirement allowance and must be either a spouse, brother, sister, parent, or child, including an adopted child, of the member, deferred member, retiring member, or retiring deferred member entitled to make the election under this act. Another retirement allowance beneficiary must not be selected. If a member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date, an election under subsection (4), other than an election under subsection (4)(b), naming the spouse as retirement allowance beneficiary, is not effective unless the election is signed by the spouse, except that this requirement may be waived by the board if the signature of a spouse cannot be obtained because of extenuating circumstances. For purposes of this subsection, "spouse" means the individual to whom the member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date. Payment to a retirement allowance beneficiary must start the first day of the month following the retirant's death.

(6) Except as otherwise provided in subsection (9), if the retirement allowance beneficiary selected under subsection (4)(b), (c), or (d) predeceases the retirant, the retirant's benefit must revert to a straight retirement allowance including postretirement adjustments, if any; is effective the first of the month following the death; and must be paid during the remainder of the retirant's life.

(7) If a retirant receiving a reduced retirement allowance under subsection (4)(b), (c), or (d) is divorced from the spouse who had been designated as the retirant's retirement allowance beneficiary under subsection (4)(b), (c), or (d), the election of a reduced retirement allowance payment option is considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689, and dated after June 27, 1991 provides that the election of a reduced retirement allowance payment option under subsection (4)(b), (c), or (d) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement allowance payment option under subsection (4)(b), (c), or (d) is considered void by the retirement system under this subsection, the retirant's retirement allowance must revert to a straight retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689. The retirement allowance must revert to a straight retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(8) A retirant, who is divorced after payment of his or her retirement allowance begins and whose former spouse is his or her retirement allowance beneficiary, may change his or her survivor option to the straight life option only if an order of the court states that the election of a survivor option under subsection (4) is considered void by the retirement system. A retirant who subsequently remarries may elect a survivor retirement allowance option for his or her spouse of 100%, 75%, or 50% of his or her actuarially reduced monthly payments, unless otherwise precluded by court order.

(9) If the retirement allowance payments terminate before an aggregate amount equal to the retirant's accumulated contributions has been paid, the difference between the retirant's accumulated contributions and the aggregate amount of retirement allowance payments made must be paid to the person designated in a writing filed with the retirement board on a form provided by the retirement board. If the designated person does not survive the retirant or retirement allowance beneficiary, the difference must be paid to the deceased recipient's estate or to the legal representative of the deceased recipient.

(10) A retirant who selected a retirement allowance beneficiary under subsection (4)(b), (c), or (d) may change his or her retirement allowance beneficiary if all of the following apply:

(a) The first retirement allowance beneficiary is a spouse.

(b) The first retirement allowance beneficiary predeceases the retirant after the retirement allowance effective date.

(c) The retirant marries another spouse after the retirement allowance effective date.

(d) Except as otherwise provided in an applicable collective bargaining agreement, the retirant files a written request with the retirement system to name his or her current spouse as a retirement allowance beneficiary not earlier than 180 days and not later than 1 year after the marriage of the retirant and the current spouse, except that a retirant whose first retirement allowance beneficiary predeceases the retirant after the retirement allowance effective date and before the effective date of the amendatory act that added this subsection has 180 days from the effective date of the amendatory act that added this subsection to file a written request with the retirement system.

(11) A retirant who was not married on his or her retirement allowance effective date and who did not select a payment option provided in this section may select an optional form of benefit payment under subsection (4)(b), (c), or (d) and designate a retirement allowance beneficiary subject to all of the following:

(a) The retirant marries after his or her retirement allowance effective date.

(b) The retirement allowance beneficiary is the retirant's spouse.

(c) The retirement allowance beneficiary is only designated as the retirement allowance beneficiary for that portion of the retirant's retirement allowance that is not subject to an eligible domestic relations order assigning a previous spouse a reduced benefit under section 4(b) of the eligible domestic relations order act, 1991 PA 46, MCL 38.1704.

(d) Except as otherwise provided in an applicable collective bargaining agreement, the retirant files a written request with the retirement system to select the optional form of benefit payment under subsection (4)(b), (c), or (d) and to designate his or her spouse as the retirement allowance beneficiary, not earlier than 180 days and not later than 1 year after the retirant's marriage except that a retirant who marries after the retirement allowance effective date and before the effective date of the amendatory act that added this subsection has 180 days from the effective date of the amendatory act that added this subsection to file a written request with the retirement system.

(e) A spouse who is added as a survivor under this subsection is not eligible for the payment of insurance premiums under section 42.

(12) The retirement allowance of the retirant who makes an election under subsection (10) or (11) must not be greater than the actuarial equivalent of the retirement allowance as determined by the retirement board that the retirant would otherwise be entitled to under subsection (4)(a) and must become effective the first day of the month following the filing of the written request with the retirement system.

(13) For purposes of determining actuarial equivalent retirement allowances under this section, the actuarially assumed interest rate is determined by the director of the department and the retirement board in consultation with the actuary with utilization of the mortality tables adopted by the department and the retirement board.

(14) If the retirant dies no later than 12 months after the effective date of his or her election under subsection (8), (10), or (11), the retirement allowance for the surviving spouse established under subsection (8), (10), or (11) must terminate 12 months after the death of the retirant.

(15) Unless otherwise provided in an applicable collective bargaining agreement, or by order of the director of the department of state police, a retirement allowance must not be paid under this section if at the time the member submits his retirement application the member is on suspension without pay for conduct involving the breach of the public trust.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1624a Deferred retirement option plan.

Sec. 24a.

(1) A deferred retirement option plan is established within the defined benefit plan that is part of the retirement system, and it is to be administered by the office of retirement services. Exclusively represented members of the retirement system may only participate in the deferred retirement option plan pursuant to notice from their collective bargaining agent that the agent agrees to the terms of the deferred retirement option plan. For each fiscal year that begins on or after October 1, 2004, the director of state police and the retirement board may elect to discontinue accepting applications for the deferred retirement option plan.

(2) An officer who has 25 years or more of credited service under this act or former act 1935 PA 251, or both, may elect to participate in the deferred retirement option plan by executing the application provided by the office of retirement services. Once the application is accepted by the office of retirement services, the officer's participation in the deferred retirement option plan is irrevocable and he or she becomes a DROP participant. The officer is solely responsible for any federal, state, or local tax due as a result of his or her participation in the deferred retirement option plan.

(3) Participation in the deferred retirement option plan does not guarantee continued employment. Except as

otherwise provided in this section, an officer who elects to participate in the deferred retirement option plan will remain an active employee eligible to receive any applicable wage changes and benefits, will be subject to civil service rules and regulations, and will be subject to the policies and procedures of the department of state police and subject to removal by the governor, if applicable, in the same manner as if he or she had not elected to participate in the deferred retirement option plan.

(4) An officer shall indicate on the application for the deferred retirement option plan the number of years that the officer wants to participate in the deferred retirement option plan, up to a maximum of 6 years. As a condition for participation, the officer agrees to retire at the conclusion of his or her participation in the deferred retirement option plan.

(5) A deferred retirement option plan account shall be created in the accounting records of the retirement system for each DROP participant. Each deferred retirement option plan account shall earn interest at the rate of 3% per annum, prorated for any fraction of a year. The deferred retirement option plan account of a DROP participant shall be credited with the following percentage of his or her monthly retirement allowance as calculated pursuant to section 24 as if he or she had retired on the day prior to becoming a DROP participant:

(a) 100% if the officer remains in the deferred retirement option plan for 6 years.

(b) 90% if the officer remains in the deferred retirement option plan for 5 years but less than 6 years.

(c) 80% if the officer remains in the deferred retirement option plan for 4 years but less than 5 years.

(d) 70% if the officer remains in the deferred retirement option plan for 3 years but less than 4 years.

(e) 60% if the officer remains in the deferred retirement option plan for 2 years but less than 3 years.

(f) 50% if the officer remains in the deferred retirement option plan for 1 year but less than 2 years.

(g) 30% if the officer remains in the deferred retirement option plan for less than 1 year.

(6) A DROP participant shall not receive a monthly retirement allowance, as calculated pursuant to section 24, until termination of his or her deferred retirement option plan participation and commencement of retirement. A DROP participant shall not have any claim to any funds in his or her deferred retirement option plan account until he or she retires at the termination of his or her deferred retirement option plan participation.

(7) Upon termination of the deferred retirement option plan participation and commencement of retirement, the former DROP participant shall select 1 or more of the following options with regard to his or her deferred retirement option plan account:

(a) A total lump-sum distribution.

(b) A partial lump-sum distribution.

(c) A lump-sum direct rollover to another qualified plan if allowed by federal law and subject to the procedures of the retirement system.

(d) Maintain the funds in the account.

A former DROP participant shall remove all funds from his or her deferred retirement option plan account no later than April 1 following the later of the calendar year in which the DROP participant attains 70 years, 6 months of age or the calendar year in which the DROP participant is retired.

(8) If a DROP participant or former DROP participant dies before removing all funds from his or her deferred retirement option plan account, the former DROP participant's designated beneficiary shall receive any remaining balances. If the former DROP participant has not named a beneficiary for his or her deferred retirement option plan account, the amount in the deferred retirement option plan account shall be paid to the beneficiary of the former DROP participant's retirement allowance. If the former DROP participant has not named a beneficiary to his or her retirement allowance, the balance in the former DROP participant's account shall be paid to the former DROP participant's estate.

(9) If a DROP participant is found to be disabled under section 29, his or her participation in the deferred retirement option plan shall immediately cease and he or she shall be retired.

(10) The deferred retirement option plan 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 a governmental deferred retirement option plan. If there is a conflict between this subsection and another subsection of this section, this subsection prevails.

(11) A deferred retirement option plan shall not be implemented until the civil service commission adopts rules to regulate all of the following:

(a) A DROP participant's payment for sick leave, annual leave, longevity, and related items.

(b) A DROP participant's accrual of sick leave, annual leave, compensatory time, and related items.

(c) A DROP participant's payment of group insurance plan premiums.

(12) If the department receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, 26 USC 1 to 1789, then the portion that will cause the disqualification does not apply.

**History:** Add. 2004, Act 83, Imd. Eff. Apr. 22, 2004

**38.1624b Members on or after June 10, 2012; minimum eligibility for retirement; application for retirement; amount of retirement allowance.**

Sec. 24b.

(1) A member who first became a member on or after June 10, 2012, who is at least 55 years of age and has at least 25 years of credited service under this act, or who is at least 60 years of age and has at least 10 years of credited service under this act, may retire on his or her written application to the retirement board, stating a date, not less than 30 days and not more than 90 days after the execution and filing of the application, he or she desires to retire.

(2) The calculation of a retirement allowance under this act for a member who first becomes a member on or after June 10, 2012 includes only the following, as applicable:

(a) 2% of final average compensation multiplied by years of service that do not exceed 25 years.

(b) For each year of service that exceeds 25 years, the 2% provided under this section must be reduced by 40 basis points for that applicable year until the percentage reaches 0% after years of service have exceeded 30 years.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1625 Payment of retirement allowance to surviving spouse, children, mother, father, sisters, or brothers; payment to deceased member's estate; applicability of supplements to retirement allowances and minimum annual retirement allowance provisions; maximum retirement allowance; eligibility for health insurance coverage.**

Sec. 25.

(1) Except as provided in section 24(4) and subject to subsection (4), the retirement system shall pay a retirement allowance to the surviving spouse of a member who, while in the discharge of his or her duty, is killed or receives injuries or contracts a disease or illness, by reason of his or her occupation, that results in his or her death. The retirement allowance must be equal to 60% of the member's final average compensation. On the death of the surviving spouse, or if there is no surviving spouse at the time of the death of the member, the retirement allowance must be paid to the children of the member under the age of 18 years, share and share alike. When each respective child attains the age of 18 years, payment to him or her must cease and his or her share must be prorated among the remaining children under 18 years of age. If there is a retirement allowance payable to a surviving spouse under this section, a retirement allowance of $100.00 per month must be paid to each of the children under the age of 18 years, if any, of the deceased member, and all payments to the children must continue until each respective child reaches the age of 18 years. If there is not a surviving spouse, nor children under the age of 18 years, a retirement allowance equal to 60% of the member's final average compensation must be paid to the mother or father, or both, of the member, if dependent on him or her for support, until the dependency ceases. If there is not a dependent mother or father, a retirement allowance of $100.00 per month must be paid to each of the sisters or brothers, if there are any under 18 years of age dependent upon the member for support. If there are not any dependents, there must be paid to the deceased member's estate any residual accumulated contributions and interest made by him or her into the reserve for employee contributions, or $1,500.00, whichever is greater.

(2) The supplements to retirement allowances and minimum annual retirement allowance provisions of this act do not apply to the special $100.00 per month allowance to children and the allowance to dependent parents and siblings.

(3) The retirement allowance payable under this section, when added to the statutory worker's compensation benefits applicable in the case, must not exceed the average annual salary paid to the member for the member's last 2 years of service with the department of state police before his or her death.

(4) For a member who first becomes a member on or after June 10, 2012, who while in the discharge of his or her duty is killed or receives injuries or contracts a disease or illness, by reason of his or her occupation, that results in his or her death, a retirement allowance must be paid in the same manner as provided for a duty disabled retirant under section 26. The retirement allowance payable under this section to a duly designated survivor beneficiary of a member who first becomes a member on or after June 10, 2012 must be offset by the actuarially determined value of the employer-funded portion plus the associated investment growth of the employer-funded portion of the member's defined contribution account balance.

(5) A member, former member, or beneficiary of a deceased member, which member first becomes a member on or after June 10, 2012 and who is eligible for a retirement allowance under this section, is eligible for health insurance coverage under section 42 in all respects and under the same terms as would be a member who first becomes a member before June 10, 2012.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2000, Act 374, Imd. Eff. Jan. 2, 2001 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1626 Retirement due to duty incurred disability; amount of retirement allowance; payment to surviving spouse or children; payment to deceased member's estate; maximum retirement allowance; eligibility for health insurance coverage.**

Sec. 26.

(1) Except as provided in section 24(4) and subject to subsection (5), a member who retires due to duty incurred disability after September 30, 1986, is entitled to receive a retirement allowance equal to 60% of the member's final average compensation.

(2) If a retirant receiving a retirement allowance under this section dies, the retirement system shall continue to pay the retirement allowance to the surviving spouse of the deceased retirant for the rest of the spouse's life.

(3) For purposes of this section, if there is no surviving spouse or on the spouse's death, the retirement allowance must be paid to the children under the age of 18 of the member, share and share alike. If there are no eligible children remaining after the spouse's death, there must be paid to the deceased member's estate any residual accumulated contributions and interest made by him or her into the reserve for employee contributions.

(4) The retirement allowance payable under this section, when added to the statutory worker's compensation benefits applicable in the case, must not exceed the average annual salary paid to the member for the member's last 2 years of service with the department of state police before the duty disability retirement allowance effective date.

(5) The retirement allowance payable under this section to a member who first becomes a member on or after June 10, 2012 must be offset by the actuarially determined value of the employer-funded portion plus the associated investment growth of the employer-funded portion of the member's defined contribution account balance.

(6) A member, former member, or beneficiary of a deceased member, which member first becomes a member on or after June 10, 2012 and who is eligible for a retirement allowance under this section, is eligible for health insurance coverage under section 42 in all respects and under the same terms as would be a member who first becomes a member before June 10, 2012. A member who is eligible for health insurance coverage under section 42 as described in this subsection is not vested in any employer contributions under section 42a(1).

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2000, Act 374, Imd. Eff. Jan. 2, 2001 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1627 Nonduty related death prior to effective date of retirement; payment to surviving spouse or children; payment to deceased member's estate; prohibited payment; commencement of retirement allowance; eligibility for health insurance coverage.**

Sec. 27.

(1) Except as provided in section 24(4) and subject to subsection (3), if a member continues as a member of the retirement system on or after the date he or she acquires 10 years of service credit and suffers a nonduty related death leaving a surviving spouse before the effective date of the member's retirement, while a member of the retirement system, the surviving spouse is entitled to receive a retirement allowance equal to 2.4% of the member's final average compensation times the number of years, including any fraction of a year, of service credited to the member under this act or former 1935 PA 251, or both, but not to exceed 25 years, as if the member had retired effective the day preceding the date of death and nominated the spouse as beneficiary. If there is not a surviving spouse, or on the spouse's death, the retirement allowance must be paid to the children under the age of 18 years of the member, share and share alike. On the spouse's death, if there are not eligible children, there must be paid to the deceased member's estate any residual accumulated contributions and interest made by him or her into the reserve for employee contributions. A retirement allowance is not payable under this section if a retirement allowance is

payable under any other section of this act.

(2) Payment of the retirement allowance must begin the first day of the calendar month next following the month in which the member died.

(3) The retirement allowance payable under this section to a member who first becomes a member on or after June 10, 2012 must be offset by the actuarially determined value of the employer-funded portion plus the associated investment growth of any employer contributions made under section 15a and forfeits the contributions and earnings on the contributions.

(4) A member, former member, or beneficiary of a deceased member, which member first becomes a member on or after June 10, 2012 and who is eligible for a retirement allowance under this section, is eligible for health insurance coverage under section 42 in all respects and under the same terms as would be a member who first becomes a member before June 10, 2012. A member who is eligible for health insurance coverage under section 42 as described in this subsection is not vested in any employer contributions under section 42a(1).

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1628 Retirement due to nonduty incurred disability; amount of retirement allowance; payment to surviving spouse or children; payment to deceased member's estate; eligibility for health insurance coverage.

Sec. 28.

(1) Except as provided in section 24(4) and subject to subsection (3), a member who retires due to nonduty incurred disability on or after the effective date of this act and after completing 10 years of credited service under this act or former 1935 PA 251, or both, is entitled to receive a retirement allowance equal to 2.4% of the member's final average compensation times the number of years, including any fraction of a year, of service credited to the member pursuant to this act or former 1935 PA 251, or both, but not to exceed 25 years, during the period of disability. Except as provided in section 24(4), if a retirant receiving a retirement allowance under this section dies, the retirement allowance must continue to be paid to the surviving spouse for the rest of the spouse's life in an amount equal to the retirement allowance that the member was receiving on the date of his or her death.

(2) For purposes of this section, if there is no surviving spouse or on the spouse's death, the retirement allowance must be paid to the children under the age of 18 of the member, share and share alike. If there are no eligible children remaining after the spouse's death, there must be paid to the deceased member's estate any residual accumulated contributions and interest made by him or her into the reserve for employee contributions.

(3) The retirement allowance payable under this section must be offset by the actuarially determined value of the employer-funded portion plus the associated investment growth and employer contributions made under section 15a and earnings on the contributions.

(4) A member, former member, or beneficiary of a deceased member, which member first becomes a member on or after June 10, 2012 and who is eligible for a retirement allowance under this section, is eligible for health insurance coverage under section 42 in all respects and under the same terms as would be a member who first becomes a member before June 10, 2012. A member who is eligible for health insurance coverage under section 42 as described in this subsection is not vested in any employer contributions under section 42a(1).

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1629 Retirement allowance on grounds of disability; medical examination; certification of findings; failure to return to active duty; forfeiture of rights.

Sec. 29.

(1) A physician designated by the director of public health and 2 other reputable physicians, 1 to be appointed by the department, and 1 by the applicant, shall examine each applicant for a retirement allowance on the grounds of disability, shall determine the extent of the disability, and shall certify the results of their findings to the director of the department of state police and the retirement board, which findings shall be binding upon the director and the

retirement board.

(2) The retirement board may require a person receiving a retirement allowance due to disability to submit to a medical examination periodically. If upon examination it is determined that the person is no longer disabled, the director of the department of state police may order the person to return to active duty. A person who fails to return to active duty following an order to do so by the director of the department of state police forfeits all rights to a retirement allowance under this act unless the person is otherwise eligible to retire.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1630 Deferred retirement allowance in lieu of refund of contributions; amount; commencement and duration of payments; forfeiture; payment to surviving spouse or dependent children; effect of reemployment; combining prior and subsequent service; recomputation of retirement allowance; service credit for member not meeting vision screening standards.**

Sec. 30.

(1) A member who resigns, dies, is transferred to a position not covered by the retirement system, or is dismissed for a reason other than his or her retirement or breach of the public trust, and who meets the requirements of subsection (3) or who has been a member under this act or former Act No. 251 of the Public Acts of 1935, or both, for 10 or more years, is entitled to a deferred retirement allowance in lieu of a payment of a refund of his or her contributions as provided in section 23. The retirement allowance of a deferred member who retires under this section on or after October 1, 1986 shall equal 2% of the deferred member's final average compensation times the number of years, including any fraction of a year, of service credited to the deferred member pursuant to this act or former Act No. 251 of the Public Acts of 1935, or both, but not to exceed 25 years. The payment shall not begin before the date the deferred member becomes 50 years of age, and shall continue during the life of a surviving spouse. The entitlement to a deferred retirement allowance under this section is forfeited if a deferred member is paid a refund of his or her contributions. If a deferred member dies before becoming 50 years of age, the deferred retirement allowance shall be paid to his or her surviving spouse or dependent children on the first day of the month following the date the retirant would have attained 50 years of age.

(2) If a member has qualified for a deferred retirement allowance under subsection (1) and has not forfeited his or her retirement allowance and subsequently is reemployed and becomes an employee of the department of state police by subscribing to the constitutional oath of office, he or she shall again become a member of this retirement system. If the member again serves for at least 5 years, his or her prior service shall be combined with his or her subsequent service and the member's retirement allowance shall be recomputed with credit for his or her total number of years served in accordance with section 24.

(3) A member who has been a member under this act or former Act No. 251 of the Public Acts of 1935, or both, for less than 10 years, shall receive the service credit needed to equal 10 years if the member does not meet the vision screening standards as required for continued employment developed by the department of state police. However, a member shall not receive the grant of service credit under this subsection if 1 or more of the following circumstances exist:

(a) The department of state police has made reasonable accommodation for the continued employment of the member.

(b) The member's failure to meet the vision screening standards is directly related to and arose out of a nonduty illness, injury, or occurrence.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1989, Act 191, Imd. Eff. Aug. 25, 1989

**38.1631 Remarriage of surviving spouse.**

Sec. 31.

The remarriage of a surviving spouse shall not render the surviving spouse ineligible to receive the retirement allowance benefits provided for in this act, regardless of the date of the remarriage.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1632 Purchase of service credit for active duty with armed forces.**

Sec. 32.

(1) A member of the retirement system who has accumulated 10 or more years of retirement system service credit under this act or former 1935 PA 251, or both, and who, while an employee of the department of state police, was or is drafted, enlisted, inducted, or commissioned into active duty with the military, naval, marine, or other armed service of the United States government and who is accepted for reemployment as an employee of the department of state police who subscribes to the constitutional oath of office within 6 months following discharge from active service, or if hospitalized at date of discharge, is accepted for reemployment as an employee of the department who subscribes to the constitutional oath of office within 6 months following release from the military facility, has not more than 2 years of the active service credited as a member of the retirement system, in the same manner as if the member had served uninterruptedly. During the period of active service, and until reemployment, the member's contributions to the reserve for employee contributions must be suspended and the member's balance in his or her account standing to the member's credit as of the last payroll date preceding the member's leave of absence must be accumulated at regular interest. If the member withdraws all or part of the accumulated contributions from his or her account, the active service must not be credited until the member returns to the reserve for employee contributions those amounts withdrawn, together with regular interest computed from the date of withdrawal to the date of repayment.

(2) A member of this retirement system who does not meet the requirements of subsection (1) and who was drafted, enlisted, inducted, or commissioned into active duty with the military or other armed service of the United States government may elect to receive service credit for not more than 2 years of active duty upon request and payment to the retirement system of an amount equal to 5% of the member's full-time compensation for the fiscal year in which the payment is made multiplied by the years and months the member elects to purchase up to the maximum. For the purposes of computing payment under this subsection, the compensation amount used must not be less than the highest fiscal year compensation previously received by the member. Service must not be credited if the service is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction does not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve. Armed service must not be credited under this subsection until the member has accumulated 10 years of credited service, of which the last 5 are continuous.

(3) Service credit may be purchased under this section instead of, but not in addition to, purchasing service credit under section 33.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1633 Purchase of service credit for service in VISTA or Peace Corps; eligibility exception.**

Sec. 33.

(1) Except as otherwise provided in this section, a member may elect to purchase service credit for not more than 2 years of full-time service as a volunteer in the VISTA program provided for under sections 101 to 108 of title I of Public Law 93-113, 42 USC 4951 to 4958, or as a volunteer, volunteer leader, or employee in the Peace Corps under sections 5 to 7 of title I of Public Law 87-293, 22 USC 2504 to 2506, on request and presentation of documentation of the employment rendered that is verifiable from official reporting unit records or other acceptable documentation as determined by the retirement board, and on payment to the retirement system of an amount that is equal to the actuarial cost of the service. For the purpose of computing payment under this subsection, the compensation amount used must not be less than the highest fiscal year compensation previously received by the member.

(2) Service must not be credited under this section until the member has accumulated 10 years of credited service.

(3) Service credit purchased under this section is not creditable toward retirement under this act if the member is or will be receiving a pension or annuity for the same service from another retirement system.

(4) A member may purchase credit under this section instead of, but not in addition to, purchasing service credit under section 32.

(5) A member who first became a member on or after June 10, 2012 is not eligible to purchase service under this section.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1634 Leaving service or reducing hours of employment for purposes of maternity or paternity or child rearing; purchase of service credit; eligibility exception.

Sec. 34.

(1) Except as otherwise provided in this section, a member who left or leaves service as an employee of the department of state police for purposes of maternity or paternity or child rearing, and returns to service as an employee of the department of state police, without other intervening employment of more than 20 hours per week for each week for which service credit is claimed, may purchase service credit for the time period or periods during which the individual was separated from service as an employee of the department of state police on request and payment to the board of an amount determined by the board to be the actuarial cost. The total service credited under this section must not exceed 2 years. A member requesting purchase of service credit under this section shall certify to the board the purpose for which the member took leave and was separated from service as an employee of the department of state police.

(2) Service credit purchased under this section may not be used to satisfy the minimum of 10 years of service credit required to receive a retirement allowance under this act.

(3) If a member who made payment under this section dies and a retirement allowance beneficiary has not been designated, or if the member leaves employment before his or her retirement becomes effective, the payment made by the member must be refunded on request to the member or to the member's legal representative.

(4) Except as otherwise provided in this section, a member who reduces hours of employment with the department of state police for purposes of maternity, paternity, or child rearing may purchase service credit for those hours by which employment was reduced if all other requirements of this section are met.

(5) A member who first became a member on or after June 10, 2012 is not eligible to purchase service under this section.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1635 Partial purchase of service credit.

Sec. 35.

A member who is otherwise entitled to purchase service credit for active duty in the armed forces under section 32 for service in the Peace Corps or VISTA under section 33, or for maternity or paternity or child rearing under section 34, may purchase such service credit in separate increments equal to 1 or more full years, or a remaining fraction of a year, if any, or both. Partial purchase of service credit under this section shall not bar future such purchases otherwise in compliance with this section and sections 32, 33, and 34, but computation of the amount of payment due shall be made separately for each purchase.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1636 Reinstatement of disability retirant.

Sec. 36.

A person who retires under section 26 due to a duty incurred disability and who has been or is reinstated in active service shall again become a member of the retirement system from the date of the reinstatement. Upon reinstatement of the disability retirant to active service, any balance the retirant may have in the reserve for retired benefit payments at the time of reinstatement to active service shall be transferred from that reserve to the reserve for employee contributions and credited to his or her individual account in that reserve. Any service, on the basis of which his or her retirement allowance was computed at the time of retirement, shall be restored to full force and effect, and he or she shall be given service credit for the period of time he or she was out of service due to the disability.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1637 Supplement to retirement allowance under former MCL 28.107(5).**

Sec. 37.

The supplement to the retirement allowance payable under section 7(5) of former Act No. 251 of the Public Acts of 1935, described as follows, is retained:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| July 1, 1972 to June 30, 1973 | 2 |
| July 1, 1971 to June 30, 1972 | 4 |
| July 1, 1970 to June 30, 1971 | 6 |
| July 1, 1969 to June 30, 1970 | 8 |
| July 1, 1968 to June 30, 1969 | 10 |
| July 1, 1967 to June 30, 1968 | 12 |
| July 1, 1966 to June 30, 1967 | 14 |
| July 1, 1965 to June 30, 1966 | 16 |
| July 1, 1964 to June 30, 1965 | 18 |
| July 1, 1963 to June 30, 1964 | 20 |
| July 1, 1962 to June 30, 1963 | 22 |
| July 1, 1961 to June 30, 1962 | 24 |
| July 1, 1960 to June 30, 1961 | 26 |
| July 1, 1959 to June 30, 1960 | 28 |
| Any time before July 1, 1959 | 30 |

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1638 Supplement to retirement allowance under former MCL 28.108c.**

Sec. 38.

The supplement to the retirement allowance payable under section 8c of former Act No. 251 of the Public Acts of 1935, described as follows, is retained:

| Effective Date of Retirement | Percent Supplemented | |
|---|---|---|
| | 10-1-76 | 10-1-77 |
| July 1, 1975 to June 30, 1976 | 1 | 1 |

| | | |
|---|---|---|
| July 1, 1974 to June 30, 1975 | 2 | 2 |
| July 1, 1973 to June 30, 1974 | 3 | 3 |
| July 1, 1972 to June 30, 1973 | 4 | 4 |
| July 1, 1971 to June 30, 1972 | 5 | 5 |
| July 1, 1970 to June 30, 1971 | 6 | 6 |
| July 1, 1969 to June 30, 1970 | 7 | 7 |
| July 1, 1968 to June 30, 1969 | 8 | 8 |
| Before July 1, 1968 | 8 | 8 |

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1639 Supplement to retirement allowance on or after October 1, 1986.

Sec. 39.

On or after October 1, 1986, the monthly retirement allowance payable to a retirant or retirement allowance beneficiary who was on the rolls as such for September, 1984 is supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| October 1, 1983 to September 30, 1984 | 2 |
| October 1, 1982 to September 30, 1983 | 4 |
| October 1, 1981 to September 30, 1982 | 6 |
| October 1, 1980 to September 30, 1981 | 8 |
| October 1, 1979 to September 30, 1980 | 10 |
| October 1, 1978 to September 30, 1979 | 12 |
| October 1, 1977 to September 30, 1978 | 14 |
| October 1, 1976 to September 30, 1977 | 16 |
| October 1, 1975 to September 30, 1976 | 18 |
| October 1, 1974 to September 30, 1975 | 20 |
| October 1, 1973 to September 30, 1974 | 22 |
| October 1, 1972 to September 30, 1973 | 24 |
| October 1, 1971 to September 30, 1972 | 26 |
| October 1, 1970 to September 30, 1971 | 28 |
| Before October 1, 1970 | 30 |

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1639a Monthly retirement allowance of retirant or beneficiary of deceased retirant; increase in payments; requirements; basis for calculations of future adjustments.

Sec. 39a.

(1) Effective October 1, 1996, the monthly retirement allowance payable to a retirant or retirement allowance beneficiary of a deceased retirant or member who meets the requirements of this section is increased 10%. This section only applies to a retirant or retirement allowance beneficiary of a deceased retirant or member who meets all of the following requirements:

(a) The retirant's or deceased retirant's effective date of retirement was before October 1, 1986 or the retirement allowance effective date for the retirement allowance beneficiary of the deceased member was before October 1, 1986.

(b) The retirant or deceased retirant retired after 25 years of service or because of duty-incurred total disability under section 5 of former Act No. 251 of the Public Acts of 1935 or the retirement allowance beneficiary of a deceased member is receiving duty death benefits under section 8 or former Act No. 251 of the Public Acts of 1935.

(c) The retirant or retirement allowance beneficiary was in payment status on the rolls of the retirement system on October 1, 1995.

(2) The increased retirement allowance under this section shall be the basis upon which future adjustments to the retirement allowance, including the increases under sections 40 and 40a, if applicable, are calculated.

**History:** Add. 1996, Act 201, Imd. Eff. May 17, 1996
**Compiler's Notes:** In subsection (1)(b), the phrase "under section 8 or former Act No. 251 of the Public Acts of 1935" evidently should read "under section 8 of former Act No. 251 of the Public Acts of 1935."

### 38.1640 Total retirement allowance of retirant or beneficiary of deceased retirant; increase; basis for calculations of future adjustments.

Sec. 40.

(1) Effective October 1, 1986, after the retirant and retirement allowance beneficiary monthly allowance recomputation as determined in section 39 has been determined, a retirant or retirement allowance beneficiary of a deceased retirant shall receive a total retirement allowance of not less than $6,000.00 per annum. This subsection does not apply to a retirant or retirement allowance beneficiary of a deceased retirant who is eligible for an increased retirement allowance under subsection (2).

(2) Effective October 1, 1996, after the retirant's or retirement allowance beneficiary's retirement allowance is increased under section 39a, if applicable, a retirant or retirement allowance beneficiary of a deceased retirant who meets the requirements of this subsection shall receive a total retirement allowance of not less than $10,800.00 per annum. This subsection only applies to a retirant or retirement allowance beneficiary of a deceased retirant, which retirant or deceased retirant retired after 25 years of service or because of duty-incurred total disability under section 5 of former Act No. 251 of the Public Acts of 1935, with a retirement allowance payable under section 24, or with a duty-incurred disability retirement allowance payable under section 26.

(3) The increased retirement allowance under this section shall be the basis upon which future adjustments to the retirement allowance, including the increase under section 40a, if applicable, are calculated.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1996, Act 201, Imd. Eff. May 17, 1996

### 38.1640a Retirement allowance of retirant or retirement allowance beneficiary; increase; amount; limitation.

Sec. 40a.

(1) Effective October 1, 1996, after the retirant's or retirement allowance beneficiary's retirement allowance is increased under section 39a or 40, as applicable, a retirant or a retirement allowance beneficiary is entitled to have his or her retirement allowance increased as provided in this section. The retirement allowance of a retirant or retirement allowance beneficiary shall be increased each October 1, beginning with the later of October 1, 1995 or the first October 1 that is at least 12 months after the retirement allowance effective date.

(2) The amount of the annual increase under this section shall be 2% of the retirement allowance that would be payable without application of this section. The annual increase under this section shall not exceed $500.00.

**History:** Add. 1992, Act 139, Imd. Eff. July 15, 1992 ;-- Am. 1996, Act 201, Imd. Eff. May 17, 1996

**38.1640b Recalculation of retirement allowance.**

Sec. 40b.

The retirement system shall recalculate each retirant's or beneficiary's retirement allowance who retired under section 26 based upon the definition of last 2 years of service added under section 3(10) by the amendatory act that added this section. If the recalculation results in an increased retirement allowance, the retirant or beneficiary is eligible to receive the recalculated retirement allowance beginning the first day of the month following the month that this section takes effect.

**History:** Add. 2000, Act 374, Imd. Eff. Jan. 2, 2001

**38.1640c Supplemental benefit; conditions.**

Sec. 40c.

(1) Beginning October 1, 2015, and subject to an annual appropriation, if the annual retirement allowance payable to a retirant or a retirement allowance beneficiary of a deceased retirant or member is less than $16,000.00 in the preceding fiscal year, the retirement system shall pay the retirant or retirement allowance beneficiary a supplemental benefit in the amount sufficient to produce an annual retirement allowance of $16,000.00 for the current fiscal year. This section only applies to a retirant or retirement allowance beneficiary of a deceased retirant or member who meets both of the following requirements:

(a) The retirant's or deceased retirant's effective date of retirement was before October 1, 1986 or the retirement allowance effective date for the retirement allowance beneficiary of the deceased member was before October 1, 1986.

(b) The retirant or retirement allowance beneficiary was in payment status on the rolls of the retirement system on or before the effective date of the amendatory act that added this section.

(2) The payment of the supplemental benefit provided in subsection (1) must be made on a schedule and in a manner determined by the office of retirement services.

**History:** Add. 2015, Act 168, Imd. Eff. Nov. 3, 2015

**38.1641 Retirement allowance increases for command officers; effect on salary adjustments.**

Sec. 41.

The retirement allowance increases being given to command officers under this act shall be considered by the coordinated compensation panel of the civil service commission when determining salary adjustments for command officers for the fiscal year ending September 30, 1987.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

**38.1641a Retirant participating and accruing leave time in bank time hours program established December 22, 1957 to July 13, 1963; supplement.**

Sec. 41a.

(1) On or after January 1, 2007, the monthly retirement allowance payable to a retirant who participated and accrued leave time in the bank time hours program established by the civil service system and operating from December 22, 1957 to July 13, 1963 when the retirant was a member is supplemented by an increase calculated under subsection (3).

(2) On or after January 1, 2007, the retirement allowance beneficiary of a deceased retirant who would have been eligible for an increased retirement allowance under subsection (1) shall have his or her retirement allowance supplemented by an increase calculated under subsection (3).

(3) A retirant or the retirement allowance beneficiary of a deceased retirant who accrued no less than 5,276 bank time hours shall have his or her annual retirement allowance supplemented by an increase of 17%. A retirant or the retirement allowance beneficiary of a deceased retirant who has accrued fewer than 5,276 bank time hours shall have his or her retirement allowance supplemented by an increase of a percentage determined by multiplying 17% by a fraction, the numerator of which is the number of bank time hours accrued by the retirant or deceased retirant and the denominator of which is 5,276. If this calculation results in a retirement allowance supplement of less than $600.00 annually, then the supplement received by the retirant or retirement allowance beneficiary entitled to a supplement under this section shall be $600.00 annually.

(4) The increase in retirement allowance under this section shall be included in the basis upon which future adjustments to the retirement allowance are calculated.

**History:** Add. 2006, Act 606, Imd. Eff. Jan. 3, 2007

**38.1642 Payment of hospitalization and medical, dental, and vision coverage insurance premiums; creation and function of health-dental-and vision benefits fund; health advance funding subaccount; transfer of funds; application of section to certain members.**

Sec. 42.

(1) Hospitalization and medical coverage insurance premiums payable by a retirant or his or her retirement allowance beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department must be paid in amounts provided by this subsection from appropriations for this purpose made to the retirement system. Until October 1, 1989, the amount payable by the retirement system must be 90% of the entire monthly premium payable for hospitalization and medical coverage insurance. Beginning October 1, 1989, the amount payable by the retirement system must be 95% of the entire monthly premium payable for hospitalization and medical coverage insurance.

(2) Effective October 1, 1989, dental coverage and vision coverage insurance premiums payable by a retirant or his or her retirement allowance beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department must be paid in amounts provided by this subsection from appropriations for this purpose made to the retirement system. The amount payable by the retirement system must be 90% of the entire monthly premium payable for dental coverage and vision coverage insurance.

(3) The health-dental-vision benefits fund is created and is the fund into which appropriations of this state for health, dental, and vision benefits are paid. Benefits payable under subsections (1) and (2) are payable from the health-dental-vision benefits fund. The assets and any earnings on the assets contained in the health-dental-vision benefits fund and the health advance funding subaccount are not to be treated as pension assets.

(4) The health advance funding subaccount is the account to which amounts transferred under section 14(3) are credited. Any amounts received from the health advance funding subaccount and accumulated earnings on those amounts must not be expended until the actuarial accrued liability for health benefits under this section is at least 100% funded. The department may expend funds or transfer funds to another account to expend for health benefits under this section if the actuarial accrued liability for health benefits under this section is at least 100% funded.

(5) Notwithstanding any other provision of this section, the department may transfer amounts from the health advance funding subaccount to the reserve for employer contributions created by section 16 if the actuarial valuation prepared under section 14 demonstrates that, as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions does not exceed the actuarial present value of benefits.

(6) Except as otherwise provided in sections 25 to 28, this section does not apply to a member who first becomes a member on or after June 10, 2012.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1989, Act 191, Imd. Eff. Aug. 25, 1989 ;-- Am. 2004, Act 50, Eff. Apr. 22, 2004 ;-- Am.

2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1642a Elimination of health insurance coverage premium for certain members; contributions into Tier 2 account; credit to health reimbursement account.**

Sec. 42a.

(1) A member who first becomes a member on or after June 10, 2012 must not receive any health insurance coverage premium from the retirement system under section 42. In lieu of any health insurance coverage premium that might have been paid by the retirement system under section 42, a member's employer shall make a matching contribution up to 2% of the member's compensation to the Tier 2 plan for each member who first becomes a member on or after June 10, 2012. A matching contribution under this subsection must not be used as the basis for a loan from an employee's Tier 2 account.

(2) A member who first becomes a member on or after June 10, 2012 may make a contribution up to 2% of the member's compensation to a Tier 2 account. A member described in this subsection may make additional contributions to his or her Tier 2 account as permitted by the department and the internal revenue code.

(3) Except as otherwise provided in this subsection, a member is vested in employer contributions made to his or her Tier 2 account under subsections (1) and (2) according to the vesting provisions under section 42b(2). A member who is eligible for health insurance coverage under section 42 or as a result of benefits provided under sections 25 to 28 is not vested in any employer contributions under subsection (1) and forfeits the contributions and earnings on the contributions.

(4) The contributions described in this section must begin with the first payday after the member is employed and end on his or her termination of employment.

(5) An individual who was a former member on June 9, 2012 and who is reemployed by the department of state police and who subscribes to the constitutional oath of office after June 10, 2012 is treated in a manner as determined by the retirement system in consultation with the office of state employer.

(6) In lieu of any other health insurance coverage that might have been paid by the retirement system, a $2,000.00 credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, must be made by the employer for a member who first becomes a member on or after June 10, 2012 who has at least 10 years of service at his or her first termination of employment.

(7) The retirement system shall determine a method to implement subsections (5) and (6), including a method for crediting the amounts in subsection (6) to comply with any agreements between the office of state employer and members, and the internal revenue code, as applicable.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1642b Qualified participant; Tier 1 and Tier 2 vesting schedule.**

Sec. 42b.

(1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2.

(2) A qualified participant who is a member of Tier 1 vests in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) On completion of 2 years of service, 50%.

(b) On completion of 3 years of service, 75%.

(c) On completion of 4 years of service, 100%.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1643 Right of member, retirant, or beneficiary to retirement allowance or other benefit.

Sec. 43.

The right of a member, retirant, or beneficiary to a retirement allowance, deferred retirement allowance, accumulated contributions, or other benefit under this act is subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

**History:** 1986, Act 182, Eff. Oct. 1, 1986 ;-- Am. 1991, Act 53, Imd. Eff. June 27, 1991 ;-- Am. 2002, Act 96, Imd. Eff. Mar. 27, 2002 ;-- Am. 2004, Act 50, Eff. Apr. 22, 2004

### 38.1644 Transfer of records, personnel, property, or funds to retirement system.

Sec. 44.

Effective January 1, 1987, all records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Michigan state police, pension, accident and disability fund created by former Act No. 251 of the Public Acts of 1935, are hereby transferred to the Michigan state police retirement system created by this act.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1645 General administration, management, and responsibility for operation of retirement system.

Sec. 45.

Through December 31, 1986, the general administration, management, and responsibility for the operation of the retirement system created by this act shall continue to be the responsibility of the director of the department of state police under the supervision of the state administrative board, as provided by section 2 of former Act No. 251 of the Public Acts of 1935.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1646 Savings clause.

Sec. 46.

All proceedings pending and all rights and liabilities existing, acquired, or incurred under former Act No. 251 of the Public Acts of 1935 at the time this act takes effect are saved. Those proceedings shall be consummated pursuant to the law in effect when the proceedings were commenced. Those rights and liabilities shall be preserved pursuant to the law in effect on the day immediately preceding the effective date of this act. To the extent that either the kinds of benefits available under former Act No. 251 of the Public Acts of 1935 are in effect on the day immediately preceding the effective date of this act or the manner of calculating those benefits under former Act No. 251 of the Public Acts of 1935 results in a greater benefit of any kind than would otherwise be available under this act or includes a benefit not otherwise available under this act, the determinations of those kinds of benefits available and the manner of calculating those benefits shall be made pursuant to former Act No. 251 of the Public Acts of 1935 for those members who participated in the retirement system as set forth in former Act No. 251 of the Public Acts of 1935 before the effective date of this act.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1647 Repeal of MCL 28.101 to 28.110.

Sec. 47.

Act No. 251 of the Public Acts of 1935, being sections 28.101 to 28.110 of the Michigan Compiled Laws, is repealed.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1648 Effective date; exceptions.

Sec. 48.

Except as provided in sections 6 and 44, this act shall take effect October 1, 1986.

**History:** 1986, Act 182, Eff. Oct. 1, 1986

### 38.1660 Implementation of Tier 2 plan.

Sec. 60.

Notwithstanding any other provision of this act, the department shall implement the Tier 2 plan as soon as administratively feasible, but not later than September 30, 2019.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1661 Meanings of words and phrases.

Sec. 61.

For the purposes of this section and sections 62 to 74, the words and phrases defined in sections 62 to 64 have the meanings ascribed to them in those sections.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1662 Definitions; A to C.

Sec. 62.

(1) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(2) "Compensation" means the remuneration paid to a participant on account of the participant's services

rendered to his or her employer equal to the sum of the following:

(a) A participant's W-2 earnings for services performed for the employer.

(b) Any amount contributed or deferred at the election of the participant that is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1663 Definitions; E to F.

Sec. 63.

(1) "Employer" means this state.

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

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1664 Definitions; P to R.

Sec. 64.

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

(2) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 72 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 73.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1665 Administration of Tier 2 plan; department as fiduciary and trustee; plan document; employ or contract personnel.

Sec. 65.

(1) The department shall administer Tier 2 and shall be the fiduciary and trustee of Tier 2. The department may appoint an advisory board to assist the department in carrying out its duties as fiduciary and trustee. The department and the state treasurer shall comply with Executive Reorganization Order No. 1999-5, MCL 38.2721, in the administration of Tier 2.

(2) The department shall determine the provisions and procedures of Tier 2 and the plan document in conformity with this act and the internal revenue code.

(3) The department has the exclusive authority and responsibility to employ or contract with personnel and for services that the department determines necessary for the proper administration of and investment of assets of Tier 2, including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1666 Claim of rights under Tier 2; hearing; application of administrative procedures act to Tier 2.**

Sec. 66.

(1) A qualified participant, former qualified participant, or refund beneficiary may request a hearing on a claim involving the participant's or beneficiary's rights under Tier 2. On written request, the department shall provide for a hearing that must be conducted under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288. An individual may be represented by counsel or other authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.224 to 24.228, 24.231 to 24.264, and 24.291 to 24.292, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018 ;-- Am. 2024, Act 8, Eff. (sine die)

**38.1667 Investment options under Tier 2 plan; limitations do not apply.**

Sec. 67.

Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the department. The limitations on the percentage of total assets for investments provided in the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141, do not apply to Tier 2.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1668 Payment of administrative expenses of Tier 2 plan.**

Sec. 68.

The administrative expenses of Tier 2 must be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the department.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

**38.1669 Participation in other public sector retirement benefits plan prohibited; exception.**

Sec. 69.

A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the department, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code. For the purposes of this section, "public sector employer" includes, but is not limited to, a reporting unit.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1670 Tier 2 vesting and contribution requirements.

Sec. 70.

(1) This section is subject to the vesting requirements of section 42b.

(2) Unless the qualified participant affirmatively elects not to contribute or elects to contribute a lesser amount, the qualified participant shall contribute 2% of his or her compensation to his or her Tier 2 account. The qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 50% of the first 2% of compensation contribution made by the qualified participant under this subsection.

(3) A qualified participant may make contributions in addition to contributions made under subsection (2) to his or her Tier 2 account as permitted by the department and the internal revenue code.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1672 Nomination of refund beneficiary; requirements.

Sec. 72.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the department. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse if the signature of the participant's spouse is required by the plan document. However, the department may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1673 Distribution of accumulated balance in Tier 2; death of participant; optional methods of distribution.

Sec. 73.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the department, the department, in a lump sum distribution, shall distribute the accumulated balance in accordance with the plan document.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the department.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

### 38.1674 Right of setoff; overpayments; embezzlement or fraud; correction of errors.

Sec. 74.

(1) The department has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(2) The department shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

**History:** Add. 2018, Act 674, Imd. Eff. Dec. 28, 2018

## PUBLIC EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT

### Act 100 of 2002

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002 ;-- Am. 2012, Act 492, Imd. Eff. Dec. 28, 2012

*The People of the State of Michigan enact:*

### 38.1681 Short title.

Sec. 1.

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1682 Definitions.

Sec. 2.

As used in this act:

(a) "Department" means the department of technology, management, and budget.

(b) "Employer contributions" means the amount transferred by an employer to a participating unit retirement system on behalf of members of the retirement system to pay for the actuarial accrued liabilities of the retirement system.

(c) "Member" means a member, vested former member, deferred member, beneficiary, designated beneficiary, or refund beneficiary of a retirement system.

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

(e) "Retirant" means a person who has retired with a retirement benefit payable from a retirement system.

(f) "Retirement benefit" means an annuity, a retirement allowance, an optional benefit, a postretirement benefit, a benefit received from a defined contribution plan, defined benefit plan, deferred compensation plan, disability plan, life insurance plan, all money, investments and income of the various funds created under a public employee retirement system, and any other right accruing to a member under a retirement system.

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

(h) "State unit" means a retirement system established under the state employees' retirement act, 1943 PA 204, MCL 38.1 to 38.69, the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437, the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1675, and the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002 ;-- Am. 2018, Act 685, Imd. Eff. Dec. 28, 2018

### 38.1683 Rights not subject to process of law or assignment.

Sec. 3.

The right of a member or retirant of a retirement system to a retirement benefit shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1684 Rights subject to forfeiture and domestic relations orders.

Sec. 4.

(1) The right of a member or retirant to a retirement benefit described in section 3 is subject to forfeiture under the public employee retirement benefits forfeiture act, 1994 PA 350, MCL 38.2701 to 38.2705.

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1685 Award or order requiring withholding payments; limitations.

Sec. 5.

If an award or order described in section 4 requires a retirement system to withhold payment of a retirement benefit or requires the retirement system to make payment or requires the individual to request that the retirement system make payment of a retirement benefit for the purposes of meeting the member's or retirant's obligations to a spouse, former spouse, or child, the withholding or payment provisions of the award or order are effective only against amounts that become payable to the member or retirant, unless otherwise provided in an eligible domestic relations order under the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711. The 1imitations contained in this section do not apply to the accumulated contributions of a person who terminates employment before acquiring a vested member status.

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1686 Benefit payments; establishment of arrangement and fund.

Sec. 6.

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

(2) If an arrangement and fund is established by a retirement system under subsection (1), the arrangement and fund shall be established and administered in accordance with section 415(m) of the internal revenue code. The governing board of the participating unit or the department on behalf of a state unit may establish and adopt policies and procedures for the arrangement and fund.

(3) If an arrangement and fund is established under subsection (1), the benefits that are paid from the fund shall be paid out of employer contributions or other eligible assets. The governing board shall determine the amount of the employer contribution that shall be allocated to the arrangement and fund. Employer contributions and other eligible assets that are contributed to the arrangement and fund shall be deposited in the arrangement and fund before deposits are made to the pension system of the participating unit.

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1687 Retirement system and benefits subject to MCL 800.401 to 800.406.

Sec. 7.

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

### 38.1688 Loan eligibility; correcting records and recovering overpayments.

Sec. 8.

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

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

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

**38.1688a Retirants eligible for election to governing board; equal treatment; compensation; definitions.**

Sec. 8a.

(1) A retirement system that has both members and retirants of its retirement system eligible to be elected to the position of member of the governing board shall comply with this section.

(2) The retirement system and the political subdivision sponsoring the retirement system shall ensure equal treatment of all individuals who are elected or seek to be elected to the position of member of the governing board. The retirement system or the political subdivision sponsoring the retirement system shall not require a retirant who is elected or seeks to be elected to the position of member of the governing board to meet more stringent or additional requirements to serve, be elected, or participate in the election process than a member who is elected or seeks to be elected to the position of member of the governing board.

(3) If the retirement system or the political subdivision sponsoring the retirement system compensates a member who is elected to the position of member of the governing board, the retirement system or the political subdivision sponsoring the retirement system shall compensate a retirant who is elected to the position of member of the governing board at no less than the least amount of compensation given to a member who is elected to the position of member of the governing board.

(4) As used in this section:

(a) "Compensate" or "compensation" mean any form of remuneration for performing duties as a member of the governing board including stipend pay by the retirement system or working at taxpayer expense as an employee of or under contract with the political subdivision sponsoring the system.

(b) "Member of the governing board" means a trustee, commissioner, or other official member of the governing board vested with the general administration, management, and operation of the retirement system or other decision-making body that is responsible for implementation and supervision of a retirement system.

**History:** Add. 2012, Act 492, Imd. Eff. Dec. 28, 2012

**38.1689 Notification of disqualification from U.S. internal revenue service.**

Sec. 9.

If the department receives notification from the United States internal revenue service that this act or any portion of this act will cause any state unit to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** 2002, Act 100, Imd. Eff. Mar. 27, 2002

## ELIGIBLE DOMESTIC RELATIONS ORDER ACT

### Act 46 of 1991

AN ACT to authorize the payment of public employee retirement system assets to certain individuals; and to prescribe the powers and duties of certain retirement systems, state departments, public officials, and public employees.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

*The People of the State of Michigan enact:*

## 38.1701 Short title.

Sec. 1.

This act shall be known and may be cited as the "eligible domestic relations order act".

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

## 38.1702 Definitions.

Sec. 2.

As used in this act:

(a) "Alternate payee" means a spouse of a participant under a judgment of separate maintenance, or a former spouse, child, or dependent of a participant, who is named in an eligible domestic relations order.

(b) "Benefit" means an annuity, a pension, a retirement allowance, or an optional benefit accrued or accruing to a participant under a retirement system or a postretirement subsidy payable to a participant under a retirement system.

(c) "Domestic relations order" means a judgment, decree, or order of a court made according to the domestic relations law of this state and relating to the provision of alimony payments, child support, or marital property rights to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child, or dependent of a participant.

(d) "Earliest retirement date" means the earliest date on which a participant meets all of the requirements for retirement under a retirement system except for termination of employment.

(e) "Eligible domestic relations order" or "EDRO" means a domestic relations order that is considered an eligible domestic relations order under section 11 or that meets all of the following requirements:

(i) The domestic relations order states the names and last known addresses of the participant and alternate payee.

(ii) The domestic relations order refers to the attachment to the domestic relations order described in subparagraph (ix).

(iii) The domestic relations order states the amount or percentage of the benefit to be paid to an alternate payee, or the manner under which the retirement system is to determine the amount or percentage of the benefit to be paid to an alternate payee.

(iv) The domestic relations order states that it applies to the retirement system and that the retirement system shall make payments to the alternate payee as required under the eligible domestic relations order and this act.

(v) The domestic relations order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by this act.

(vi) The domestic relations order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value.

(vii) The domestic relations order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under a previously filed eligible domestic relations order.

(viii) The domestic relations order is filed with the retirement system before the participant's retirement allowance effective date or the participant's death, whichever occurs first.

(ix) The domestic relations order requires that the social security numbers of the participant and the alternate payee be sent to the retirement system in an attachment to the order. The attachment shall not be filed with the court, but shall be attached to the domestic relations order when it is sent to the plan administrator for approval.

(f) "Filed with the retirement system" means that the retirement system has determined that the domestic relations order submitted for filing is acceptable as an EDRO.

(g) "Participant" means a member, deferred member, vested former member, deceased former member, or retirant under the retirement system.

(h) "Postretirement subsidy" includes, but is not limited to, all of the following:

(i) A supplemental annuity.

(ii) A supplemental payment to a participant.

(iii) A percentage increase to a benefit payable to a participant.

(iv) Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

(i) "Retirement system" means a public employee retirement system created and established by this state or any political subdivision of this state.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991 ;-- Am. 2008, Act 348, Imd. Eff. Dec. 23, 2008 ;-- Am. 2013, Act 32, Imd. Eff. May 16, 2013

### 38.1703 Right of alternate payee to share of benefit payable to participant; payment of benefit pursuant to EDRO.

Sec. 3.

Subject to the requirements of this act, an alternate payee is entitled to an actual interest in a share of a benefit that is or will become payable to a participant, if so provided in an EDRO filed with the retirement system. The retirement system shall administer the payment of a benefit pursuant to the EDRO and this section.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

### 38.1704 Payment of benefit to alternate payee under EDRO; effective date; form.

Sec. 4.

Except as otherwise provided in this act, the payment of a benefit to an alternate payee under an EDRO and this act shall begin on the retirement allowance effective date of the participant. The payment of a benefit under an EDRO and this act shall be paid in 1 of the following forms, as applicable:

(a) A single life annuity that is equal to the actuarial equivalent of the alternate payee's share of the benefit payable throughout the life of the alternate payee. If the participant is entitled to the payment of a benefit that is not reduced due to early retirement under the retirement system, the alternate payee's single life annuity shall be calculated using the participant's unreduced benefit. If the participant is only entitled to the payment of a benefit that is reduced due to early retirement under the retirement system, the alternate payee's single life annuity shall be calculated using the participant's reduced benefit.

(b) If a retirement system offers a participant an optional form of payment of a benefit at retirement, a reduced benefit that is equal to the actuarial equivalent of the total benefit being divided under the EDRO payable throughout the lives of the participant and the alternate payee. The reduced benefit shall be payable in the manner provided under the optional form of payment under the retirement system. The EDRO shall specify the percentage or amount of the reduced benefit that is payable under this subdivision to the participant and to the alternate payee while both are alive. If the participant predeceases the alternate payee while a reduced benefit is being paid to the participant and the alternate payee under this subdivision, the survivor portion of the reduced benefit shall be payable to the alternate payee. If the alternate payee predeceases the participant while a reduced benefit is being paid to the participant and the alternate payee under this subdivision, the alternate payee's percentage or amount of the reduced benefit shall revert to and become payable to the participant.

(c) A single life annuity that is equal to the alternate payee's share of the benefit payable throughout the life of the participant.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

### 38.1705 Election by alternate payee to receive interest in benefit after participant's earliest retirement date, but before termination of employment date; recalculation of benefit if participant retires before age 60.

Sec. 5.

(1) An EDRO may provide for the payment of a benefit to an alternate payee beginning on or after the participant's earliest retirement date but before the participant terminates employment as provided in this section. An alternate payee shall begin to receive the payment of a benefit under this section effective the first day of the month immediately following the month in which the alternate payee notifies the retirement system of his or her

election to begin to receive payment of his or her interest in the benefit of a participant.

(2) If an alternate payee elects to receive his or her interest in the benefit of a participant after the participant's earliest retirement date but before the participant's termination of employment, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the participant's benefit that would be payable when the participant reaches age 60. If the participant retires before age 60, the retirement system shall recalculate the benefit payable to the alternate payee so that the recalculated benefit payable to the alternate payee plus the benefit previously paid to the alternate payee are the actuarial equivalent of the alternate payee's share of the benefit payable to the participant. If the recalculated benefit is more than the benefit the alternate payee is receiving, the retirement system shall begin paying the recalculated benefit to the alternate payee effective the first day of the month immediately following the month in which the participant retires.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

### 38.1706 Spouse under judgment of separate maintenance or former spouse considered in EDRO as surviving spouse for purpose of receiving retirement benefit; benefit amount.

Sec. 6.

An EDRO may provide that a spouse under a judgment of separate maintenance or a former spouse is considered the spouse of a participant for the purpose of receiving a benefit as a surviving spouse under the retirement system. The benefit payable to a spouse under a judgment of separate maintenance or a former spouse as a surviving spouse under this section shall be computed as provided in the EDRO and the retirement system. If the amount or percentage of the benefit to be paid to a spouse under a judgment of separate maintenance or a former spouse as the surviving spouse of the participant under this section is less than the entire amount payable under the retirement system, the surviving spouse or other beneficiary of the participant, as determined under the retirement system, is entitled to receive the portion of the benefit not payable to a spouse under a judgment of separate maintenance or a former spouse under this section.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

### 38.1707 Death of alternate payee before interest in benefit paid; reversion.

Sec. 7.

If an alternate payee under this act dies before receiving any payment of his or her interest in a benefit pursuant to this act and an EDRO, that interest reverts to the participant.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

### 38.1708 Creation, assignment, or recognition of alternate payee's right to interest in benefit share not prohibited assignment under retirement system.

Sec. 8.

The creation, assignment, or recognition of a right of an alternate payee to an actual interest in a share of a benefit that is or will become payable to a participant pursuant to an EDRO under this act is not a prohibited assignment under a retirement system.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

**38.1709 Determination by retirement system whether domestic relations order is EDRO; procedure; notice.**

Sec. 9.

Each retirement system shall establish a reasonable procedure to determine if a domestic relations order is an EDRO under this act. The retirement system shall promptly notify the participant and alternate payee named in a domestic relations order that the retirement system has received the domestic relations order. The notice shall include a description of the procedure by which the retirement system determines if the domestic relations order is an EDRO under this act.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

**38.1710 Domestic relations order as EDRO; determination by retirement system; notice; retirement allowance effective date; filing amended EDRO; providing notice by first-class mail.**

Sec. 10.

(1) Except as otherwise provided in this section, the retirement system shall, within a reasonable period of time after receiving a domestic relations order, determine if the domestic relations order is an EDRO under this act. If the retirement system determines that the domestic relations order is an EDRO under this act, the retirement system shall promptly notify the participant and alternate payee named in the EDRO that the domestic relations order is an EDRO. The retirement system shall begin the payment of a benefit under this act according to the EDRO and this act on the first day of the month following the month in which the domestic relations order was determined to be an EDRO or the first day of the month following the month in which a benefit is payable under the EDRO and this act, whichever is later. If the retirement system determines that the domestic relations order is not an EDRO under this act, the retirement system shall promptly notify the participant and alternate payee named in the domestic relations order that the domestic relations order is not an EDRO. The retirement system shall specify in the notice why the retirement system determined that the domestic relations order is not an EDRO under this act. Except as otherwise provided in this section, a determination by the retirement system that a domestic relations order is not an EDRO under this act does not prohibit a participant, alternate payee, or court from filing an amended domestic relations order with the retirement system under this act.

(2) Upon the retirement system's receipt of the domestic relations order, the participant's retirement allowance effective date shall be stayed and shall not occur until either of the following occur:

(a) The retirement system accepts the domestic relations order for filing as an EDRO. In this instance, the participant's retirement allowance effective date will occur as if the participant's retirement allowance effective date had not been stayed.

(b) Sixty days have passed starting on the date the retirement system gives the participant and alternate payee notice that the retirement system will not accept the domestic relations order for filing as an EDRO because of a defect in the domestic relations order that disqualifies it as an EDRO, unless otherwise provided in this subsection. During this 60-day period, the parties may submit to the retirement system an amended domestic relations order that will qualify for filing as an EDRO. The retirement system shall provide notice of rejection of any amended domestic relations orders in the same manner set forth above, but there can only be one 60-day period and only with respect to rejection of the first domestic relations order submitted to the retirement system for filing as an EDRO. If the 60-day period is applicable and the parties submit in a timely manner a domestic relations order that is acceptable as an EDRO, but the retirement system does not make this determination until after expiration of the 60-day period, the participant's retirement allowance effective date will be further stayed until the retirement system makes this determination. If the 60-day period is applicable and the participant dies or the parties fail to submit to the retirement system a domestic relations order that qualifies as an EDRO before expiration of the 60-day period, the retirement system shall not accept for filing as an EDRO any domestic relations orders pertaining to the participant.

(3) If, upon receipt of a retirement application from a participant, the retirement system determines that a previously submitted domestic relations order that is intended to qualify as an EDRO does not qualify as an EDRO, the retirement system shall notify the participant and alternate payee stating the reasons why the domestic relations order does not qualify as an EDRO, if the retirement system has not already provided that notice. In cases where

notice is required to be given under this section, the participant's retirement allowance effective date is stayed as provided in this section.

(4) If an EDRO is filed with the retirement system, but the participant and alternate payee wish to file an amended EDRO, they may do so at any time before the participant's retirement allowance effective date, or death, whichever occurs first. In this instance, the participant's retirement allowance effective date will not be stayed upon the submission of the domestic relations order. If the participant and alternate payee fail to submit a domestic relations order that qualifies as an EDRO before the participant's retirement allowance effective date or before the participant's death, whichever occurs first, the latest EDRO filed with the retirement system governs. The EDRO cannot be amended, vacated, or otherwise set aside after the retirement system has made the first payment under the EDRO or after the participant dies, whichever occurs first.

(5) The retirement system shall provide all notice it is required to give to the participant or alternate payee under this act by first-class mail addressed to the participant and alternate payee at the address listed for each in the domestic relations order submitted to the retirement system for filing as an EDRO. If no address is listed for the participant in the domestic relations order, the retirement system shall mail the notice to the last known address of the participant that the retirement system has in its files. If no address is listed for the alternate payee in the domestic relations order, notice to the participant is notice to the alternate payee. Notice is given if the retirement system complies with this section and upon the date the notice is mailed.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991 ;-- Am. 2013, Act 32, Imd. Eff. May 16, 2013

### 38.1711 Status of domestic relations order filed with retirement system before effective date of act.

Sec. 11.

A domestic relations order filed with the retirement system before the effective date of this act is considered an EDRO under this act if the retirement system is making payments under the domestic relations order on the effective date of this act or to the extent a domestic relations order is consistent with the provisions of this act. This section does not prohibit a participant, alternate payee, or court from filing an amended domestic relations order under this act.

**History:** 1991, Act 46, Imd. Eff. June 27, 1991

## THE JUDGES RETIREMENT ACT OF 1992

### Act 234 of 1992

AN ACT to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to provide for certain disqualifications; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

*The People of the State of Michigan enact:*

Article I

### 38.2101 Short title.

Sec. 101.

This act shall be known and may be cited as "the judges retirement act of 1992".

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2102 Meanings of words and phrases.

Sec. 102.

For the purposes of this act, the words and phrases defined in this article have the meanings ascribed to them in those sections.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2103 Definitions; A.

Sec. 103.

(1) "Accumulated contributions" means the balance standing to the member's credit in the reserve for member contributions. The balance includes member contributions and interest attributable to those contributions.

(2) "Active duty" means full-time duty in the armed forces other than active duty that is exclusively for training purposes.

(3) "Actuarial cost" means an amount that a member shall pay, except as otherwise specifically provided in this act, to purchase additional service credit under this act. Actuarial cost is determined and calculated as provided in section 215.

(4) "Actuarial funding requirement" means the sum of the contribution rates determined in section 301(2) and (3) multiplied by the aggregate annual compensation of active members.

(5) "Actuary" means the actuary of the retirement system as provided in section 205.

(6) "Aggregate annual compensation" means the sum of all compensation, as defined in section 104(1), paid annually to active members.

(7) "Armed forces" means the United States army, navy, marine corps, air force, and coast guard, including the reserve components.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2104 Definitions; C, D.

Sec. 104.

(1) "Compensation" means 1 of the following:

(a) For a plan 1 member or plan 2 member, the salary paid by this state.

(b) For a plan 3 member, the salary paid by this state, except that for a plan 3 member who is a judge of the recorder's court of the city of Detroit, compensation means an amount equal to the salary paid by this state to a judge of the circuit court and for a plan 3 member who is a judge of the probate court, compensation means an amount equal to the salary paid pursuant to section 821 of the revised judicature act of 1961, 1961 PA 236, MCL 600.821. In addition, compensation for a plan 3 member includes salary standardization payments converted as an addition to the state base salary as provided by section 504, if any, and the balance converted pursuant to section 504a, if any.

(c) For a plan 4 member, the total judicial salary payable from all sources.

(d) For a plan 5 member, the total salary paid by this state and the district control unit of the district court in the thirty-sixth district.

(e) For a plan 6 or 7 member, the salary approved by the county board of commissioners and includes salary standardization payments made to the member by the county.

(2) "County retirement plan" means a county retirement plan established under section 12a of 1851 PA 156, MCL 46.12a.

(3) "Court fees" means a court filing fee or costs earmarked for the retirement system and collected by a county clerk, clerk of the circuit court, or clerk of the district court pursuant to sections 880, 2529, 5756, 8371, 8381, and 8420 of the revised judicature act of 1961, 1961 PA 236, MCL 600.880, 600.2529, 600.5756, 600.8371, 600.8381, and 600.8420.

(4) "Credited service" means all of the following:

(a) Service credited to a member under this act, the former judges retirement system, and the former probate judges retirement system.

(b) Other public service purchased under section 403.

(c) Service purchased under section 404.

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

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

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

(8) "District control unit" means district control unit as defined in section 8104 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8104.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1995, Act 193, Imd. Eff. Nov. 7, 1995 ;-- Am. 1999, Act 215, Eff. May 30, 2000

**38.2105 Definitions; E, F.**

Sec. 105.

(1) 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, that 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 that separately accounts for amounts transferred into such 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.

(2) 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.

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

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

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

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

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

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1995, Act 193, Imd. Eff. Nov. 7, 1995 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2008, Act 514, Imd. Eff. Jan. 13, 2009

### 38.2106 Definitions; I to M.

Sec. 106.

(1) "Interest" means the rate or rates of interest per annum, compounded annually, as determined by the retirement board.

(2) "Internal revenue code" means the United States internal revenue code of 1986.

(3) "Judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of the circuit court, judge of the district court, judge of the probate court, or judge of the recorder's court of the city of Detroit.

(4) "Medical adviser" means the medical adviser of the retirement system as provided in section 205.

(5) "Member" means a judge or state official who is included in the membership of the retirement system as provided in section 401.

(6) "Membership service" means service performed as a member under this act or under the former judges retirement system or former probate judges retirement system.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1995, Act 193, Imd. Eff. Nov. 7, 1995

### 38.2107 Definitions; O.

Sec. 107.

(1) "Option A beneficiary" means the retirement allowance beneficiary designated by the member under section 506(1)(a).

(2) "Option B beneficiary" means the retirement allowance beneficiary designated by the member under section 506(1)(b).

(3) "Other public service" means any of the following services performed within this state by a member:

(a) Service as a former elected official who received an annual state salary for service performed in that office.

(b) Service as a municipal judge.

(c) Service as a justice of the peace in a governmental unit.

(d) Service as a referee of the traffic division of the recorder's court of the city of Detroit, but not to exceed more than 3 years of service.

(e) Service as a judge under the former judges retirement system or former probate judges retirement system if

the member has not received credit for the service under this act.

(f) For a state official, state service.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2108 Definitions; P.

Sec. 108.

(1) "Plan 1 member" means a member or vested former member who is or was the governor, lieutenant governor, secretary of state, attorney general, or legislative auditor general.

(2) "Plan 2 member" means a member or vested former member who is or was the constitutional court administrator, a justice of the supreme court, or a judge of the court of appeals.

(3) "Plan 3 member" means a member or vested former member who is or was a judge of the circuit court, judge of the recorder's court of the city of Detroit, judge of the district court, except a judge of the thirty-sixth district described in subsection (8), or a judge of the probate court, except a judge of the probate court described in subsection (7), (9), or (10).

(4) "Plan 3a member" means a member or vested former member described in subsection (3) who does not convert any of the salary standardization payment under section 504 or sections 14a and 14c of former 1951 PA 198.

(5) "Plan 3b member" means a member or vested former member described in subsection (3) who converts $2,250.00 of the salary standardization payment under section 504(1) or section 14a of former 1951 PA 198.

(6) "Plan 3c member" means a member or vested former member described in subsection (3) who converts the balance of the salary standardization payment under section 504(2) or section 504a or section 14c of former 1951 PA 198.

(7) "Plan 4 member" means a member or vested former member who is or was a judge of the probate court serving in a single county of less than 15,000 population.

(8) "Plan 5 member" means a member or vested former member who is or was a judge of the district court in the thirty-sixth district.

(9) "Plan 6 member" means a member who on the day before the effective date of this act was a member or vested former member of the former probate judges retirement system, who may be a member of a county retirement plan, and who is under the 3% benefit formula provided by section 16(l)(a), (b), and (c) of former 1954 PA 165.

(10) "Plan 7 member" means a member who on the day before the effective date of this act was a member or vested former member of the former probate judges retirement system, who is not a member of a county retirement plan, and who is under the 3.5% benefit formula provided by section 16(1)(d) of former 1954 PA 165.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000
**Compiler's Notes:** In subsection (9), the reference to “section 16(l)(a), (b), and (c)” evidently should read “section 16(1)(a), (b), and (c).”

### 38.2109 Definitions; R.

Sec. 109.

(1) "Refund beneficiary" means 1 or more persons whom the member, vested former member, or retirant nominates under section 405 for the purpose of being paid accumulated contributions in the event of the death of the member, vested former member, or retirant if a retirement allowance is not payable to a retirement allowance beneficiary.

(2) "Reporting unit" means the unit of government responsible for reporting a member's compensation, contributions, and other information required by the retirement system. Reporting unit includes, but is not limited to, the state court administrator's office, the supreme court finance office, a county, a city, a district control unit, a local unit of government retirement plan, and a department of this state.

(3) "Retirant" means a member who retired with a retirement allowance payable from the reserves of the retirement system under this act, the former judges retirement system, or the former probate judges retirement

system.

(4) "Retirement allowance" means a series of monthly payments to a retirant or retirement allowance beneficiary from the reserves of the retirement system.

(5) "Retirement allowance beneficiary" means a person who is being paid a retirement allowance from the reserves of the retirement system because of the death of a member, vested former member, or retirant under this act, the former judges retirement system, or the former probate judges retirement system.

(6) "Retirement board" means the Michigan judges retirement board created by section 202.

(7) "Retirement system" means the Michigan judges retirement system created by section 201.

(8) "Revised judicature act" means the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2110 Definitions; S.

Sec. 110.

(1) "Salary standardization payment" means the amount of money payable by this state to a county, a city, or a district control unit for supplemental salary paid to a judge, a portion of which a plan 3 member may convert under section 504 as additional compensation for the purpose of calculating a retirement allowance under this act.

(2) "Service" means service performed as a member of this retirement system, the former judges retirement system, the former probate judges retirement system, and other service purchased under sections 403 and 404.

(3) "State service" means service performed as a state employee that is creditable under the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being sections 38.1 to 38.48 of the Michigan Compiled Laws.

(4) "State official" means the governor, lieutenant governor, secretary of state, attorney general, legislative auditor general, and constitutional court administrator.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2110a “Tier 1” and “Tier 2” defined.

Sec. 110a.

(1) "Tier 1" means the retirement plan available under this act to a member who first became a judge or state official before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

(2) "Tier 2" means the retirement plan established pursuant to the internal revenue code that is available to qualified participants under article VII.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### 38.2111 Definitions; V.

Sec. 111.

"Vested former member" means a member who is entitled to a deferred vested service retirement allowance under section 502.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

Article II

### 38.2201 Michigan judges retirement system; creation; purpose.

Sec. 201.

The Michigan judges retirement system is created for judges and state officials.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2202 Michigan judges retirement board; creation within department; membership; terms; vacancy; compensation and expenses.

Sec. 202.

(1) The Michigan judges retirement board is created in the department. The retirement board consists of the following 5 retirement board members:

(a) The state treasurer.

(b) The attorney general.

(c) One judge who is a member of the retirement system appointed by the governor with the advice and consent of the senate.

(d) Two members appointed by the governor with the advice and consent of the senate.

(2) Except as otherwise provided in this section, the term of office of appointed retirement board members is 4 years. If a vacancy occurs in the office of an appointed retirement board member, the governor, with the advice and consent of the senate, shall appoint a retirement board member for the remainder of the unexpired term. A retirement board member shall continue to hold office after the expiration of his or her term of office until a successor is appointed and is qualified.

(3) The legislature shall annually establish the per diem compensation of the appointed retirement board members and the schedule for reimbursement of expenses incurred by a retirement board member to attend meetings of the retirement board and to perform services required by the retirement board.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000
**Compiler's Notes:** For transfer of powers and duties of Judges retirement board to Michigan retirement board, and abolishment of judges retirement board, see E.R.O. No. 2015-4, compiled at MCL 38.1174.

### 38.2203 Retirement board member; oath; quorum; unexcused absences; election of chairperson and vice chairperson.

Sec. 203.

(1) Each appointed retirement board member, before assuming office, shall take an oath of office. An appointed retirement board member shall immediately file the oath of office with the secretary of state. A retirement board member is a trustee of the retirement system.

(2) A majority of the retirement board constitutes a quorum for the transaction of business at a meeting of the retirement board. An appointed retirement board member who fails to attend 2 consecutive, regularly scheduled meetings of the retirement board and whose absence is not excused by the retirement board is considered to have resigned from retirement board membership. The retirement board shall declare the appointed retirement board member's office vacated as of the date of adoption of a proper resolution.

(3) The retirement board shall elect from its membership a chairperson and vice chairperson. The chairperson and vice chairperson of the retirement board shall take office immediately upon election and serve until a successor

is elected.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2204 Retirement board; duties pursuant to MCL 16.101 to 16.608; rules; conducting business at public meeting; writings available to public.**

Sec. 204.

(1) The retirement board has the rights, authority, and discretion in the proper discharge of retirement board duties pursuant to the executive organization act of 1965, Act No. 380 of the Public Acts of 1965, being sections 16.101 to 16.608 of the Michigan Compiled Laws.

(2) The retirement board may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the implementation and administration of this act.

(3) The retirement board shall conduct its business at a public meeting of the retirement board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. The retirement board shall give public notice of a time, date, and place of a meeting of the retirement board in the manner required by Act No. 267 of the Public Acts of 1976.

(4) The retirement board shall make a writing prepared, owned, used, in the possession of, or retained by the retirement board in the performance of an official function available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2205 Management functions; director of bureau of retirement systems as executive secretary; employees.**

Sec. 205.

The department shall be responsible for the budgeting, procurement, and related management functions of the retirement system. The director of the bureau of retirement systems in the department is the executive secretary of the retirement system. The executive secretary, with department approval, shall employ the services of an actuary and, subject to rules of the civil service commission, shall employ medical advisers, clerical, technical, and administrative employees the executive secretary considers necessary for the proper operation of the retirement system.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2206 State treasurer as treasurer of retirement system; authority; duties.**

Sec. 206.

(1) The state treasurer is the treasurer of the retirement system. The state treasurer has investment authority, including the custodianship of the funds of the retirement system, and has fiduciary responsibility with regard to the investment of funds of the retirement system. The state treasurer shall invest the funds of the retirement system in compliance with Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws.

(2) The state treasurer shall deposit the funds of the retirement system in the same manner and subject to the laws governing the deposit of state funds by the state treasurer. The state treasurer shall credit income earned by

the retirement system's reserves to the respective reserves under this act that earn the income as provided in section 213.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2207 Attorney general as retirement board attorney.

Sec. 207.

The attorney general is the legal adviser to the retirement board and shall act as the retirement board's attorney. The attorney general shall represent the retirement board in all litigation to which the retirement board is a party.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2208 Administration of retirement system.

Sec. 208.

The retirement system shall draw its warrants upon the state treasury, payable out of funds of the retirement system, for the payment of retirement allowances, accumulated contributions, and the payment of salaries and other expenses necessary in the administration of the retirement system.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2209 Annual report.

Sec. 209.

The retirement system shall prepare an annual report for each fiscal year. The annual report shall contain information regarding the financial, actuarial, and other activities of the retirement system during the fiscal year. The retirement system shall furnish a copy of the annual report to the governor, the legislature, each retirant, and each retirement allowance beneficiary, and to a member, vested former member, or any other person upon request.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2210 Reserve for member contributions.

Sec. 210.

The reserve for member contributions is created. The retirement system shall deposit contributions from the compensation of members, and other member payments as provided in this act, except member contributions for health benefits as provided in section 305, in the reserve for member contributions. The retirement system shall provide for the maintenance of an individual account for each member showing the amount of the member's accumulated contributions. Except as provided in section 212, the retirement system shall pay accumulated contributions as provided in this act from the reserve for member contributions. If a person ceases to be a member, any unclaimed balance of accumulated contributions remain in the reserve for member contributions. If a member's

accumulated contributions are forfeited by the member, as provided in this act, the retirement system shall transfer the forfeited accumulated contributions from the reserve for member contributions to the reserve for investment income. Upon the retirement of a member, the retirement system shall transfer the accumulated contributions of the member from the reserve for member contributions to the reserve for retirement benefits.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2211 Reserve for employer contributions.

Sec. 211.

The reserve for employer contributions is created. The retirement system shall credit to the reserve for employer contributions all court fees, late fees, and interest payments received pursuant to section 304; state appropriations received pursuant to section 302; and employer contributions received under section 303. The retirement system shall credit to the reserve for employer contributions any residual balance remaining in the reserve for investment income after crediting interest to the reserves created by this act and after satisfying any other requirements under this act. The retirement system shall transfer money into or out of the reserve for employer contributions as provided in section 212.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2212 Reserve for retirement benefits.

Sec. 212.

The reserve for retirement benefits is created. The retirement system shall pay all retirement allowances and residual accumulated contributions of deceased retirees from the reserve for retirement benefits. The retirement system shall credit to the reserve for retirement benefits a member's accumulated contributions at the time of retirement as provided in section 210. Each year following receipt of the annual actuarial valuation, the retirement system shall bring the balance in the reserve for retirement benefits into balance with the actuarial present value of retirement allowances in payment status by a transfer to or from the reserve for employer contributions. The actuary shall take into account the pending transfer when preparing the annual actuarial valuation.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2213 Reserve for investment income.

Sec. 213.

(1) The reserve for investment income is created. The state treasurer shall credit to the reserve for investment income all interest, dividends, and other income from the investment of retirement system assets except for those of the reserve for health benefits created under section 214. The retirement system shall credit to the reserve for investment income all gifts and bequests to the retirement system; all forfeited contributions received pursuant to section 210; a surplus in any reserve created by this act except for those of the reserve for health benefits created under section 214; and all other money for which there is no specific disposition provided.

(2) Except as otherwise provided in this subsection, the retirement system shall annually credit interest on the preceding year balances in the reserve for member contributions, reserve for employer contributions, and the reserve for retirement benefits. However, the retirement system shall begin to calculate interest on member contributions made within a calendar year on the first day of the calendar year following the contribution and shall credit the interest on member contributions at the end of the calendar year. The retirement system shall charge the

reserve for investment income the interest credited to the reserves under this subsection.

(3) The retirement system shall pay the expenses for the administration of the retirement system, exclusive of amounts payable as retirement allowances and other benefits provided in this act, from the reserve for investment income.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2214 Reserve for health benefits.**

Sec. 214.

The reserve for health benefits is created. The retirement system shall deposit into the reserve for health benefits the member contributions for health benefits required by section 305(1)(a), amounts transferred pursuant to section 217(1), and accumulated earnings on these amounts and contributions. The retirement system shall disburse from the reserve for health benefits the premiums for hospital and medical-surgical and sick care benefits as required by sections 509 and 719.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

***** 38.2214a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED *****

**38.2214a Postretirement medical benefits.**

Sec. 214a.

(1) Following the date of the determination described in subsection (11) and following the date of the election made under subsection (4), the retirement system shall provide postretirement medical benefits for eligible judges and their health benefit dependents and postdeath medical benefits for health benefit dependents who survive a deceased contributor. Medical benefits shall be provided from a separate account established under the retirement system pursuant to section 401(h) of the United States internal revenue code.

(2) A separate account, designated as the "medical benefit account", shall be maintained within the reserve for health benefits. The assets of the retirement system in excess of the amounts then credited to the medical benefit account shall not be used for providing medical benefits under this section. Except as otherwise provided in this section, the assets of the retirement system attributable to amounts then credited to the medical benefit account shall not be used or diverted for any purpose other than providing medical benefits.

(3) A separate account, designated as the "medical benefit administrative account", shall be maintained within the reserve for health benefits. Administrative costs of maintaining the medical benefit account shall be paid out of the medical benefit administrative account. Eligible judges making contributions to the medical benefit account consent as a condition of participation that transfers may be made from the subaccounts of each contributor to the medical benefit administrative account equal to no more than 25% of the earnings of funds on account in their respective subaccounts.

(4) Upon becoming a member of Tier 1 or a qualified participant in Tier 2, and at such other times as the department shall permit, an eligible judge may elect to become a contributor and make contributions to the medical benefit account in an amount not to exceed the maximum contribution then permitted under subsection (5). Each eligible judge who is a member of Tier 1 or a qualified participant in Tier 2 may elect to make contributions to the medical benefit account during an election period of not less than 90 days as determined by the retirement system. Within the medical benefit account, the department shall maintain a subaccount for each contributor that reflects all contributions made by or for that contributor, adjusted for investment experience and payment of medical benefits. The employer of the contributor shall pick up the contributor's contributions in whole or in part and may require that its contributions be derived from a reduction in the contributor's cash salary. If the contributor's contributions

are picked up by the employer on a salary-reduction basis, the contributor's election shall be irrevocable to the extent required by section 401(h) of the United States internal revenue code. Contributions picked up under this subsection on a salary-reduction basis are not included as gross taxable income of the contributor. The value of medical benefits provided from a contributor's subaccount shall not be included in the income of the retired contributor or the contributor's health benefit dependents.

(5) The benefits to be provided from the medical benefit account, together with life insurance, if any, provided under the retirement system, are intended to be subordinate to retirement benefits under the retirement system. Accordingly, contributions in calendar years after 1999 credited to a contributor's subaccount, together with contributions, if any, that may be made to provide life insurance for the contributor under the retirement system, shall not exceed an aggregate amount equal to 1/3 of the contributions, including employee contributions, made for those years to provide a retirement allowance for the contributor under Tier 1 or Tier 2 of the retirement system. For purposes of applying a limitation established by this subsection, the retirement system may rely on an actuarial certification prepared by the actuary, demonstrating compliance, and reasonable actuarial assumptions selected by the actuary shall apply for purposes of determining the aggregate contributions for retirement allowances to be determined under this subsection. The retirement system shall determine the method, timing, and limits applicable to all contributors. In no case shall a determination made by the retirement system exceed the maximum provided by this subsection.

(6) All payments or reimbursements of medical benefits shall be charged against the balance of the retired contributor's subaccount. Payments or reimbursements shall not be made after the subaccount has been exhausted. Medical benefits to be provided from the medical benefit account shall consist of any of the following as applicable:

(a) Payment of premiums for the retired contributor and the contributor's health benefit dependents under the state health plan, the state dental plan, and the state vision plan if the contributor and dependents are enrolled in any of those plans.

(b) Payment or reimbursement of premiums or other charges for coverage of the retired contributor and the contributor's health benefit dependents under any group health plan within the meaning of section 5000(b)(1) of the United States internal revenue code.

(c) Payment or reimbursement of premiums or other charges to obtain health insurance coverage within the meaning of section 9832(b)(1) of the United States internal revenue code for the retired contributor and the contributor's health benefit dependents.

(d) Payment or reimbursement of expenses paid or incurred for the medical care, as defined in section 213(d)(1) of the United States internal revenue code, of the retired contributor and the contributor's health benefit dependents.

Payment or reimbursement of premiums, charges, and expenses shall be made only upon presentation of proper documentary evidence of amounts, dates of coverage or service, recipient of coverage or service, and such other information as the department shall require.

(7) While a contributor or retired contributor remains alive, the department shall comply with the contributor's written directions in regard to the type of medical benefits to be provided under this subsection and the allocation of the medical benefits among the retired contributor and the contributor's health benefit dependents if the directions comply with this subsection and the requirements of the department in regard to the form and content of the written directions. The department shall also afford each contributor the opportunity to give written directions in regard to the allocation of medical benefits to and among some or all of the contributor's surviving health benefit dependents following the contributor's death as designated on a beneficiary form developed by the retirement system. Upon death of the contributor and while funds remain in the contributor's subaccount, the department shall observe the written directions in allocating medical benefits among the contributor's surviving health benefit dependents, while giving the dependents or their legal representatives a reasonable opportunity to select the type of medical benefits to be provided. In the absence of valid written directions from the contributor in regard to the allocation of medical benefits following the contributor's death, the department shall allocate funds remaining in the contributor's subaccount to provide medical benefits to the contributor's surviving health benefit dependents, until all funds have been expended.

(8) If there is a balance remaining in the subaccount of a contributor or retired contributor following the deaths of the contributor and all of the contributor's health benefit dependents, then that balance shall be forfeited and distributed to the medical benefit administrative account.

(9) As used in this section:

(a) "Contributor" means an eligible judge who has elected to make contributions to the medical benefit account created under this section.

(b) "Eligible judge" means a judge of the circuit court, the district court, or the probate court.

(c) "Former member" means an individual who was a member and who terminates employment upon which his or her membership is based for any reason.

(d) "Retired contributor" means a contributor who becomes a former qualified participant and attains the benefit commencement age, or who becomes a former member who either attains age 60 or meets the membership requirements for a retirement allowance under section 501(1).

(10) Contributions shall not be picked up by this state pursuant to this section until the department receives notification from the United States internal revenue service that such contributions will not be included as gross income of the contributor.

(11) This section does not apply until the department receives notification from the United States internal revenue service that the establishment of the medical benefit account under this section does not cause the retirement system to be disqualified for tax purposes.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

**38.2215 Determination of actuarial cost; establishing method; calculation.**

Sec. 215.

The retirement board and the department shall establish the method of determining the actuarial cost. The actuary shall calculate the actuarial cost based upon the product of the following elements:

(a) A percentage that when multiplied by a member's compensation results in the average actuarial present value of the additional benefits resulting from the crediting of 1 additional year of service. The percentage may vary because of the member's age, credited service, or plan member classification or the retirement allowance beneficiary's age.

(b) A member's compensation.

(c) The number of years and fraction of a year of service a member elects to purchase up to the maximum, if any.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2216 Compliance with reciprocal retirement act.**

Sec. 216.

The retirement system shall comply with the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, if a resolution electing to come under the provisions of the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, is in effect.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2217 Court fee fund; applicability of section.**

Sec. 217.

(1) A court fee fund is created in the state treasury. The state treasurer shall deposit into the court fee fund all money received from the executive secretary pursuant to section 304(4). The state treasurer shall, if funds remain in the court fee fund after the transfer described in subsection (3), transmit a portion of the money in the court fee fund, not exceeding $2,200,000.00 in any fiscal year, to the court equity fund created by section 151b of the revised judicature act of 1961, 1961 PA 236, MCL 600.151b. If the court fee fund exceeds $2,200,000.00 in any fiscal year and $2,200,000.00 is transmitted to the court equity fund, an amount may be appropriated from the court fee fund for operational expenses of trial courts. Operational expenses may include the payment of salaries of trial court judges other than judges of the district court. Any money remaining in the court fee fund at the end of the fiscal year shall remain in the court fee fund and shall not revert to the general fund.

(2) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund described in section 6 of the public employee retirement benefit preservation act, the benefits that are required to be paid from that fund shall, to the extent permitted by applicable law, be paid from a portion of the money in the

court fee fund and any earnings on those amounts or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that shall be allocated to that fund and deposit that amount in that fund.

(3) The state treasurer shall, if funds remain in the court fee fund after the transfer described in subsection (2), transmit a portion of the money in the court fee fund and any earnings on those amounts to the reserve for health benefits created by section 214 to pay expected health care costs for the subsequent fiscal year that are not covered as a result of employee contributions under sections 305(1) and 714(6), and to pay, in an amount not to exceed $100,000.00 in each fiscal year, any health care costs not paid from the reserve for health benefits since fiscal year 1996-1997.

(4) This section applies unless the department receives notification from the United States internal revenue service that this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1996, Act 525, Imd. Eff. Jan. 13, 1997 ;-- Am. 1998, Act 99, Imd. Eff. May 28, 1998 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**Compiler's Notes:** In subsection (2), the reference to the "public employee retirement benefit preservation act" evidently should be a reference to the "public employee retirement benefit protection act," (MCL 38.1681 et seq.).

## Article III

### 38.2301 Actuary; duties.

Sec. 301.

(1) The retirement system shall direct the actuary to do all of the following:

(a) Determine the annual level percent of payroll contribution rate to finance the benefits provided under this act by actuarial valuation pursuant to subsections (2) and (3), and upon the basis of the risk assumptions that the retirement board and the department adopt after consultation with the state treasurer and the actuary.

(b) Make an annual actuarial valuation of the retirement system in order to determine the actuarial condition of the retirement system and the required contribution to the retirement system.

(c) Make an annual actuarial gain-loss experience study of the retirement system in order to determine the financial effect of variations of actual retirement system experience from projected experience.

(2) The actuary shall compute the contribution rate for monthly benefits payable in the event of death of a member before retirement or the disability of a member using a terminal funding method of actuarial valuation.

(3) The actuary shall compute the contribution rate for benefits other than those described in subsection (2) using an individual projected benefit entry age normal actuarial cost method. The contribution rate for service that may be rendered in the current year, known as the normal cost contribution rate, is equal to the aggregate amount of individual entry age normal costs divided by l% of the aggregate amount of active members' valuation compensation. The contribution rate for unfunded service rendered on or before the last day of the fiscal year, known as the unfunded actuarial accrued liability contribution rate, is equal to the aggregate amount of unfunded actuarial accrued liabilities divided by l% of the actuarial present value over a period not to exceed 40 years of projected benefit compensation, where unfunded actuarial accrued liabilities are equal to the actuarial present value of benefits reduced by the actuarial present value of future normal costs and the actuarial value of assets on the last day of the fiscal year.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**Compiler's Notes:** In subsection (3), the instances of "l%" were originally printed with the numeral "1" represented by the alphabet character "l" and evidently should read "1%."

### 38.2302 Annual appropriation; determination and certification of amount.

Sec. 302.

(1) Except as provided in subsection (2), the legislature shall annually appropriate to the retirement system the amount determined under subsection (2) in order to fund the retirement system on an estimated basis for the fiscal

year for which the appropriation is made. The legislature shall annually appropriate to the retirement system the amount determined under subsection (3) in order to reconcile the estimated appropriation made in the previous fiscal year with the actual appropriation needed to adequately fund the retirement system for the previous fiscal year.

(2) The legislature shall annually appropriate to the retirement system an amount equal to 3.5% of the aggregate annual compensation or the difference between the sum of the contribution rates determined under section 301(2) and (3) multiplied by the aggregate annual compensation and the estimated revenue from court fees under section 304, whichever is greater. The department shall submit the amount determined under this subsection in the executive budget to the legislature for appropriation in the next fiscal year. If the department receives notification from the United States internal revenue service that this subsection will cause the retirement system to be disqualified for tax purposes under the internal revenue code, this subsection does not apply and subsection (4) applies.

(3) Not later than 60 days after the termination of each state fiscal year, the bureau of retirement systems shall certify to the director of the department the actual aggregate annual compensation paid to all active members during the preceding state fiscal year and the difference, if any, between the actual actuarial funding requirement and the sum of the actual revenue received by the retirement system during the preceding fiscal year from the appropriation pursuant to subsection (2) or (4), whichever is applicable, employer contributions pursuant to section 303, court filing fees pursuant to section 304, and mandatory member contributions pursuant to section 305. The department shall submit the amount determined under this subsection in the executive budget to the legislature for appropriation in the next fiscal year.

(4) If applicable, the bureau of retirement systems in the department shall certify to the director of the department an amount equal to the difference between the estimated actuarial funding requirement for the next fiscal year and the sum of the estimated revenue to be received by the retirement system during the next fiscal year from employer contributions pursuant to section 303, court fees pursuant to section 304, and mandatory member contributions pursuant to section 305. The department shall submit the amount determined under this subsection in the executive budget to the legislature for appropriation in the next fiscal year.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2303 Thirty-sixth district court; annual contribution; amount; plan 3b or 3c member supplemental salary payment.

Sec. 303.

(l) The reporting unit for the district court in the thirty-sixth district shall contribute annually to the retirement system for each member who is a judge of the thirty-sixth district court an amount equal to the product of the total annual additional salary paid to the member pursuant to section 8202 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.8202 of the Michigan Compiled Laws, and the annual level percent of payroll contribution rate determined under section 301. The supreme court shall subtract the figure calculated in this subsection from the salary standardization payment paid to the reporting unit for the thirty-sixth district, prorated on the basis of the frequency with which this state makes salary standardization payments to the reporting unit.

(2) The reporting unit that pays a plan 3b member's or a plan 3c member's supplemental salary shall contribute annually to the retirement system an amount equal to the product of $2,250.00 of the state salary standardization payment and the annual level percent required to fund the retirement system. The supreme court shall subtract the figure calculated in this subsection from the salary standardization payment paid to the reporting unit that pays the judge's salary prorated on the basis of the frequency with which this state makes salary standardization payments to the reporting unit that pays the judge's supplemental salary.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

***** 38.2304 SUBSECTION (4) MAY NOT APPLY: See (4) of 38.2304 *****

**38.2304 Deposit of court fees, late fees, and interest payments.**

Sec. 304.

(1) Except as provided in subsection (4), the retirement system shall transmit all court fees received by the executive secretary and all late fees and interest payments received under this section to the state treasurer for deposit in the reserve for employer contributions where these assets and earnings on these assets shall be treated as pension assets.

(2) The retirement board may periodically establish a late fee and interest rate for all court fees that are not submitted to the executive secretary as prescribed in subsection (3). The retirement board shall establish a late fee of $50.00 or more and an interest rate of 12% or more per year for a late transmittal of court fees.

(3) If the county treasurer, clerk of the circuit court, or clerk of the district court fails to transmit to the executive secretary all court fees by the twentieth day of the month following the month in which they are collected under the revised judicature act, the retirement system shall assess a late fee for each late transmittal and an interest payment for each day the transmittal is late. Upon written notice from the executive secretary to the director of the supreme court finance office, the state treasurer shall withhold payment of the amount due under this section for late court fees, late fees, and interest payments from the salary standardization payment payable to a county or district control unit that fails to make timely court fee transmittals as required by this section.

(4) When the retirement system determines that the amount of court fees deposited into the reserve for employer contributions under subsection (1) equals the amount needed in addition to other publicly financed contributions to sustain the required level of publicly financed contributions, based upon the most recent actuarial valuation available at the beginning of the applicable fiscal year, the executive secretary shall transmit to the state treasurer the remainder of the court fees received during the fiscal year for deposit into the court fee fund created by section 217 where these assets and any earnings on these assets shall not be treated as pension assets for any purpose. This subsection applies unless the department receives notification from the United States internal revenue service that this subsection will cause the retirement system to be disqualified for tax purposes under the internal revenue code.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2305 Contributions; plan member classification; manner of payment; withholding payment to county or district control unit for contributions not received within 60 days.**

Sec. 305.

(1) Each member, upon taking office and so long as he or she remains in office, shall make contributions to the retirement system according to the applicable plan member classification as follows:

(a) A plan 1 member or a plan 2 member shall contribute 5% of the member's compensation. From this contribution, the retirement system shall deposit an amount equal to 2.0% of the member's compensation into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 509.

(b) A plan 3a member, a plan 3b member, or a plan 5 member shall contribute 3.5% of the member's compensation.

(c) A plan 3c member, a plan 4 member, a plan 6 member, or a plan 7 member shall contribute 7% of the member's compensation. However, a plan 6 member shall not contribute more than $980.00 annually.

(2) The retirement board shall determine the manner in which member contributions are paid. Except as otherwise provided in this section, the retirement system shall credit member contributions when received to the reserve for member contributions.

(3) Upon written notice from the executive secretary to the state court administrator, the state treasurer shall withhold payment of the amount due from the salary standardization payment payable to a county or district control unit for member contributions that are not received by the retirement system within 60 days after the due date.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2306 Member contributions picked up by state; tax treatment; contributions picked up by employer of judge in Detroit recorder's court, thirty-sixth district court, or probate court or by resolution or act of**

**governing body; contributions picked up by state pursuant to MCL 38.2402, MCL 38.2403, or MCL 38.2404.**

Sec. 306.

(1) This state shall pick up member contributions required by section 305 for all compensation paid after December 31, 1982, for members who receive a salary paid by this state. Contributions picked up are treated as employer contributions in determining tax treatment under the internal revenue code. Contributions picked up under this subsection are not included as gross taxable income of the member until disbursement from the retirement system. This state shall pay picked up member contributions from the same source of funds that is used for paying compensation to the member. This state shall pick up member contributions by either a reduction in the member's cash salary, an offset against a future salary increase, or a combination of a reduction in cash salary and an offset against a future salary increase. Member contributions picked up are treated for all purposes in the same manner and to the same extent as member contributions made on or before December 31, 1982.

(2) The employer of a member who is a judge of the recorder's court of the city of Detroit, of the district court in the thirty-sixth district, or of the probate court, by resolution or other enabling act of the governing body, may pick up the contributions required by section 305 for all compensation paid after December 31, 1982, and reported to the retirement system. If the employer does not pick up the contributions, the employer shall continue to deduct the amount that could have been picked up under this subsection from the member's compensation. Contributions picked up are treated as employer contributions in determining tax treatment under the internal revenue code. Contributions picked up under this subsection are not included as gross taxable income of the member until disbursement from the retirement system. The employer shall pay member contributions picked up by the employer from the same source of funds that is used for paying compensation to the member. The employer may pick up these contributions by either a reduction in the member's cash salary, an offset against a future salary increase, or a combination of a reduction in cash salary and an offset against a future salary increase. Member contributions picked up are treated for all purposes in the same manner and to the same extent as member contributions made before the date picked up.

(3) This state shall pick up member contributions required as a result of a member's repaying the member's previously withdrawn accumulated contributions, plus interest, pursuant to section 402(3)(b), or a member's election to purchase service credits pursuant to section 403 or 404. Subsection (1) applies with respect to these contributions. The department shall determine the manner in which such contributions are paid. This subsection does not apply until the department receives notification from the united States internal revenue service that contributions picked up by this state pursuant to this subsection shall not be included as gross income of the member until they are distributed or made available to the member, retirant, retirement allowance beneficiary, or refund beneficiary.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000

**38.2307 Disposition of unclaimed retirement allowance or money payable on separation or death.**

Sec. 307.

Upon the separation from service by a member or upon the death of a retirant, a retirement allowance beneficiary, or a refund beneficiary, any unclaimed retirement allowance or other money otherwise payable on account of the separation or death remains a part of the reserve in which it is deposited until claimed by the separated member, retirement allowance beneficiary, refund beneficiary, or the estate or legal representative of a separated member, retirement allowance beneficiary, or refund beneficiary.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2308 Offsetting benefits against amounts owed; forfeiture of service credit for transfer to federal agency; rights subject to public employee retirement benefit protection act.**

Sec. 308.

(1) The retirement system may offset retirement benefits or refunds payable under this act against amounts owed to the retirement system by a member, vested former member, retirant, retirement allowance beneficiary, or refund beneficiary.

(2) If the retirement system is required by the federal government pursuant to a court order to transmit a part of a member's accumulated contributions to a federal agency, the service credit that is covered by the payment shall be forfeited in the same manner as if the employee had requested and been paid a refund of the member's most recent contributions.

(3) The right of a person to a retirement allowance, to the return of accumulated contributions, to an optional benefit, to any other right accrued or accruing to a member or beneficiary under this act, and to the money belonging to the retirement system is subject to the public employee retirement benefit protection act.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

Article IV

### 38.2401 Retirement system; members; membership form; conditions for ceasing membership.

Sec. 401.

(1) Each of the following is a member of the retirement system:

(a) A person who is duly elected or appointed as a judge or state official on or after the effective date of this act, unless within 30 days from taking office the judge or state official files a written notice not to participate in the retirement system with the retirement system.

(b) A person who was a member of the former judges retirement system or former probate judges retirement system on the day before the effective date of this act and who remains a judge or state official on and after the effective date of this act.

(c) A person, other than a retirant, who is authorized by the supreme court to perform judicial duties for a limited period or a specific assignment pursuant to section 23 of article VI of the state constitution of 1963 and who performs at least 20 days of service in a 30-consecutive day period.

(2) A judge or state official who becomes a member under subsection (1)(a) shall complete a membership form furnished by the retirement system and shall forward the form to the retirement system within 30 days of taking office. A judge or state official, upon becoming a member, is considered to have agreed that in the event of adjudication of the member's mental incompetency, a guardian, if appointed, has the power and authority to complete and execute the necessary application forms to retire the member as provided in section 507. In all cases of doubt, the retirement board shall decide the membership status of a judge or state official.

(3) The membership of a judge or state official in the retirement system ceases when the member retires, when the members forfeits his or her membership under the provisions of section 507, at the end of the judicial term in which the member who is a judge attains age 70, or upon ceasing to be a judge or state official unless the person is a vested former member.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2401a Exclusion from Tier 1; eligibility as qualified participant in Tier 2.

Sec. 401a.

(1) Notwithstanding section 401, an individual described in this subsection is not a member of the Tier 1 retirement plan:

(a) An individual who first becomes a judge or state official on or after March 31, 1997.

(b) An individual who elects to terminate membership under section 701 or 701a and who, but for that election, would otherwise be eligible for membership in Tier 1 pursuant to section 401.

(2) An individual who first becomes a judge or state official on or after March 31, 1997 is eligible to be a qualified participant in Tier 2 subject to article VII.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

### 38.2402 Retirement board; determining service credits; forfeiture; reinstatement; service credit for limited period or specific assignment.

Sec. 402.

(1) The retirement board shall credit each member with the number of years and months of service for which the member performed service as a judge or state official. The retirement board shall credit service for the month in which the member's retirement becomes effective if the member retires from service before the end of the month and the member terminates his or her service after the fifteenth of the month. Except as provided in subsection (4), the retirement board shall not credit service for any month for which a member receives less than 1 month's salary. The retirement board shall not credit more than 1/12 of a year of service for all service rendered in a 30-consecutive day period. After a member who is a judge attains age 70, the retirement board shall not credit service after the end of the term in which the judge attains age 70.

(2) A member's credited service is forfeited at the time his or her membership terminates, except upon becoming a retirant or as provided in section 502.

(3) The retirement system shall reinstate credited service forfeited because of a break in membership in the member's service account if all of the following conditions are satisfied:

(a) The person, upon return to membership, acquires 6 months or more of credited service performed as a member of this retirement system subsequent to the break in service that caused the forfeiture.

(b) The member pays to the retirement system all accumulated contributions previously paid to the member, plus interest from the date of payment to the member to the date of repayment to the retirement system.

(4) Except as provided in this subsection and subject to the requirements of this subsection, the retirement system shall grant credited service to the same extent as provided in subsection (1) to a member who is serving as a judge for a limited period or a specific assignment as authorized by the supreme court pursuant to section 23 of article VI of the state constitution of 1963. The retirement system shall grant 1/12 of a year of credited service for a 30-consecutive day period in which a member described in this subsection performs service and receives a salary under the following circumstances:

(a) The member performs service for at least 20 days in the 30-consecutive day period.

(b) The member receives a salary that is not less than the pro rata of the state base salary for the court in which the service is performed.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2403 Election to purchase other public service credit; request; documentation; payment of actuarial cost; basis for calculating service credit.

Sec. 403.

(1) A member who has 4 or more years of membership service may elect to purchase service credit for other public service by filing a request with the retirement system. The member shall provide documentation of the other public service and shall pay into the reserve for member contributions the actuarial cost. The member shall relinquish for himself or herself and his or her beneficiaries all rights in and to a pension or annuity payable from another retirement system for the same period of service purchased under this section.

(2) The retirement system shall calculate the amount of service credit for other public service under subsection (1) on the same basis as provided in section 402(1).

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2404 Election to purchase active duty service credit; request; documentation; payment to reserve; basis for calculating service credit.**

Sec. 404.

(1) A member who has 12 or more years of credited service may elect to purchase not more than 2 years of service credit for active duty by filing a request with the retirement system. The member shall provide documentation of the active duty and shall pay into the reserve for member contributions an amount equal to 5% of the member's annualized rate of compensation at the time payment is made multiplied by the number of years and months of active duty service that the member elects to purchase up to the maximum. The member shall relinquish for himself or herself and his or her beneficiaries all rights in and to a pension or annuity payable from another retirement system for the same period of service purchased under this section.

(2) The retirement system shall calculate the amount of service credit for active duty under subsection (1) on the same basis as provided in section 402(1).

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2405 Accumulated contributions; payment to person ceasing to be member; payment to refund beneficiary before retirement allowance is payable; payment to refund beneficiary if retirant and option A beneficiary, option B beneficiary, or spouse dies; nomination of refund beneficiary.**

Sec. 405.

(1) Except as otherwise provided in this act, if a person ceases to be a member before satisfying the age and service requirements for a retirement allowance under section 501 or 501b, the retirement system shall pay to the person his or her accumulated contributions upon request.

(2) If a member dies and a retirement allowance is not or will not become payable on account of the member's death, the retirement system shall pay the deceased member's accumulated contributions at the time of death to the refund beneficiary. If a refund beneficiary is not nominated or the refund beneficiary fails to survive the deceased member, the retirement system shall pay the deceased member's accumulated contributions to the deceased member's estate or legal representative.

(3) If a retirant and his or her option A beneficiary, option B beneficiary, or spouse, if applicable, dies before an aggregate amount of retirement allowance equal to the deceased retirant's accumulated contributions at the time of retirement has been paid, the retirement system shall pay the difference between the deceased retirant's accumulated contributions and the aggregate amount of retirement allowance paid to the deceased retirant's refund beneficiary. If a refund beneficiary is not nominated or the refund beneficiary fails to survive the retirant and his or her option A beneficiary, option B beneficiary, or spouse, the retirement system shall pay the difference to the estate or legal representative of the last to die of the retirant or his or her option A beneficiary, option B beneficiary, or spouse.

(4) A judge or state official who becomes a member under section 401(1)(a) may nominate a refund beneficiary in the membership form under section 401 or a member, vested former member, or retirant may nominate a refund beneficiary in a nominating form furnished by the retirement system. A member, vested former member, or retirant shall file the nominating form with the retirement system, which form is not valid until received by the retirement system. The member or retirant may nominate a different refund beneficiary by delivering a new nominating form to the retirement system. The retirement system shall disregard the nomination of a refund beneficiary in the membership form and all nominating forms previously filed by a member or retirant upon receipt of a more recent nominating form under this subsection.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2406 Retirant authorized by supreme court to perform judicial duties for limited period or specific assignment; retirant elected or appointed by governor as judge or state official.**

Sec. 406.

(1) If a retirant is authorized by the supreme court to perform judicial duties for a limited period or a specific assignment pursuant to section 23 of article VI of the state constitution of 1963, the retirement system shall continue payment of his or her retirement allowance without change in amount or conditions. A retirant is not a member during the period he or she performs judicial duties for a limited period or a specific assignment as authorized by the supreme court pursuant to section 23 of article VI of the state constitution of 1963.

(2) If a retirant is elected or appointed by the governor as a judge or state official, the retirement system shall suspend payment of the retirant's retirement allowance during the period he or she remains in office. The retirement system shall base the suspension of benefits on 1/12 of the annual retirement benefit for each month the retirant serves in the office to which he or she was elected or appointed. A retirant who is again elected as a judge or state official is a member pursuant to section 401. The retirement system shall recalculate the retirement allowance of a retirant who again becomes a member under this subsection if the member leaves office due to disability or death, or if the member again retires after serving 1 full term or more in office. A retirement allowance recalculated pursuant to this subsection is subject to section 503. The retirement system shall begin payment of the recalculated retirement allowance under this subsection to a person who again retires effective the first of the month following the month in which the person leaves office. If a retirant again becomes a member under this subsection but is not entitled to have his or her retirement allowance recalculated under this subsection, the retirement system shall begin payment of his or her retirement allowance without change in amount or conditions effective the first of the month following the month in which the person leaves office.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

Article V

**38.2501 Retirement allowance; requirements; application; form; retirement date; beginning payment.**

Sec. 501.

(1) A member or vested former member who has 4 or more years of membership service and who meets 1 or more of the following requirements, except as otherwise provided in this subsection, is entitled to a retirement allowance computed under section 503:

(a) The member or vested former member is 60 years of age or older and has 8 or more years of credited service.

(b) The member or vested former member is 55 years of age or older and has 18 or more years of credited service of which the last 6 years are continuous service.

(c) The member or vested former member has 25 or more years of credited service of which the last 6 years are continuous service.

(d) The member or vested former member is 55 years of age or older but less than 60 years of age and has 12 or more, but less than 18, years of credited service, of which the last 6 years are continuous service. However, the retirement system shall permanently reduce the retirement allowance calculated under section 503 for a member who meets the requirements of this subdivision by the early retirement reduction percentage, which is 0.5% for each month, and fraction of a month, from the effective date of the member's retirement to the date of the member's sixtieth birthday.

(e) The member or vested former member is 60 years of age or older and has served 2 full terms in the office of governor, lieutenant governor, secretary of state, attorney general, or 1 full term in the office of legislative auditor general.

(2) A member or vested former member who meets or will meet the requirements of subsection (1) may retire by filing a written application with the retirement system on a form furnished by the retirement system. The member or vested former member shall state a date in the application on which he or she wishes to retire that is on or after the date the member or vested former member meets the requirements under subsection (1) and that is 30 days or more after the date the application is filed with the retirement system.

(3) The retirement system shall begin payment of the retirement allowance payable to a member or vested former member who retires under this section on the first day of the month after termination of service or the first day of the month that is 30 days or more after the application is filed with the retirement system, whichever is later. The retirement system shall pay a full month's retirement allowance for the month in which a retirant or retirement allowance beneficiary ceases to be eligible for continuation of benefits.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2501a Early retirement benefits act; system subject to regulation.**

Sec. 501a.

This retirement system is subject to the regulation of early retirement benefits act.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2502 Vested former member; entitlement to deferred vested service retirement allowance; forfeiture.**

Sec. 502.

A member who leaves office for a reason other than the member's retirement or death, who does not withdraw accumulated contributions, and who satisfies the service or term of office requirements of section 501(1) is a vested former member. Subject to section 501, a vested former member is entitled to a deferred vested service retirement allowance computed pursuant to section 503 or, if applicable, section 13a of former Act No. 198 of the Public Acts of 1951 or section 15 of former Act No. 165 of the Public Acts of 1954, as in effect at the time of termination of the vested former member's tenure in office. The vested former member shall forfeit his or her entitlement to a deferred vested service retirement allowance if the vested former member withdraws from the retirement system his or her accumulated contributions unless the service is reinstated as provided in section 402.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2503 Member or vested former member; payment of straight life retirement allowance; calculation; payment for lifetime of retirant; election of optional retirement allowance.**

Sec. 503.

(1) Upon retirement as provided in this act, the retirement system shall pay to the member or vested former member a straight life retirement allowance computed under subsection (2). If the member retires under the provisions of section 501(1)(d), the retirement system shall reduce the straight life retirement allowance as provided in section 501(1)(d).

(2) The retirement system shall calculate the member's or vested former member's straight life retirement allowance pursuant to 1 of the following plan member classifications, as applicable:

(a) For a plan 1 member, the retirement allowance is 30% of the member's or vested former member's final compensation plus 3-3/4% of the member's or vested former member's final compensation multiplied by the number of years and fraction of a year of credited service in excess of 8 years of credited service but not more than 16 years of credited service. A retirant shall not receive a retirement allowance under this subdivision that exceeds 60% of his or her final compensation. A plan 1 member who was holding his or her respective office on July 12, 1978, may elect to receive a retirement allowance under this section for an amount equal to or less than the computed benefit or to receive a retirement allowance computed under the state employees' retirement system created by the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being sections 38.1 to 38.48 of the Michigan Compiled Laws.

(b) For a plan 2 member, a plan 3 member, or a plan 4 member who has less than 12 years of credited service, the retirement allowance is 3% of the member's or vested former member's final compensation multiplied by the member's or vested former member's years and fraction of a year of credited service. For a plan 2 member, a plan 3 member, or a plan 4 member who has 12 or more years of credited service, the retirement allowance is 50% of the member's or vested former member's final compensation plus 2.5% of the member's or vested former member's final compensation multiplied by the number of years and fraction of a year of credited service in excess of 12 years of credited service but not more than 16 years of credited service. A retirant shall not receive a retirement allowance

under this subdivision that exceeds 60% of his or her final compensation.

(c) For a plan 5 member, the retirement allowance is equal to the amount computed under subdivision (b) minus the amount of the straight life retirement allowance the member would have been entitled to receive or will receive from another publicly supported retirement plan as of August 31, 1981, based on the same judicial service accrued in the other publicly supported retirement plan as of August 31, 1981. The retirement system shall base the retirement allowance attributable to the same judicial service in another publicly supported retirement plan on service credit for service as a judge in that plan as a percent of total service credit in that plan.

(d) For a plan 6 member, the retirement allowance is 3% of the member's or vested former member's final compensation multiplied by the number of years and fraction of a year of credited service. A retirant shall not receive a retirement allowance under this subdivision that exceeds $15,000.00 or 40% of his or her final compensation, whichever is greater. A retirant shall not receive a retirement allowance under this subdivision that when added to a retirement benefit payable under a county retirement plan exceeds 66-2/3% of his or her final compensation.

(e) For a plan 7 member, the retirement allowance is equal to the amount computed under this subdivision. A retirant shall not receive a retirement allowance under this subdivision that exceeds 66-2/3% of his or her final compensation. The retirement allowance under this subdivision equals the sum of the following, as applicable:

(i) 3.5% of the member's or vested former member's final compensation multiplied by the years and fraction of a year of service credited before January 1, 1983 for which the member or vested former member makes the 5% payment to the retirement system as provided in section 16(1)(d) of former Act No. 165 of the Public Acts of 1954, if any.

(ii) 3% of the member's or vested former member's final compensation multiplied by the years and fraction of a year of service credited before January 1, 1983 for which the 5% payment described in subdivision (i) is not made, but not to exceed 40% of the member's or vested former member's final compensation.

(iii) 3.5% of the member's or vested former member's final compensation multiplied by the years and fraction of a year of service credited after December 31, 1982.

(3) The retirement system shall pay a straight life retirement allowance to a retirant for his or her lifetime. Except as otherwise provided in section 508, the retirement system shall not make an additional retirement allowance payment upon the death of a retirant receiving a straight life retirement allowance other than the full month's retirement allowance payable for the month in which the retirant dies.

(4) At the time of retirement, a member or vested former member may elect to be paid an optional retirement allowance under an optional form of payment provided in section 506 in lieu of the straight life retirement allowance under this section.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2504 Plan 3 member; conversion of $2,250.00 of state salary standardization payment; exemptions; limitations; state base salary of probate court judge; deduction and transfer of contribution.**

Sec. 504.

(1) Except as otherwise provided in this subsection, a judge who is a plan 3 member shall convert $2,250.00 of the state salary standardization payment annually prescribed by law for any state fiscal year beginning after September 30, 1981 as an addition to the judge's state base salary for purposes of computation of a retirement allowance under this act. A judge who, within 30 days from taking office, files a written notice not to participate in the provisions of this subsection with the retirement system is exempt from this subsection. A judge who was serving on December 31, 1982 and who did not elect to convert $2,250.00 of the state salary standardization payment under section 14a of former 1951 PA 198 is exempt from this section. For the purposes of the calculation of a judge's combined county, city, or district control unit retirement benefit, a judge who has not filed a written notice not to participate in the provisions of this subsection with the retirement system under this subsection or the former judges retirement system shall have the $2,250.00 of the salary standardization payment subtracted from the final average compensation figure used to calculate the judge's county, city, or district control unit retirement benefit.

(2) Except as otherwise provided in this subsection, a judge who is a plan 3 member and who is not exempt from subsection (1) shall convert the balance of the state salary standardization payment annually prescribed by law but which, when added to $2,250.00, does not exceed 40% of the difference between the state base salary and the maximum statutory salary established by the revised judicature act for any state fiscal year beginning after September 30, 1982 as an addition to the judge's state base salary for purposes of computation of a retirement

allowance under this act. A judge who, before April 1, 1983, or within 30 days from taking office, whichever is later, files a written notice not to participate in the provisions of this subsection with the retirement system is exempt from this subsection. For the purposes of the calculation of a judge's combined county, city, or district control unit retirement benefit, a judge who has not filed a written notice not to participate in the provisions of this subsection with the retirement system under this subsection or the former judges retirement system shall have the additional state salary standardization payment as an addition to the judge's state base salary for computation of a retirement allowance under this act subtracted from the final average compensation figure used to calculate the judge's county, city, or district control unit retirement benefit.

(3) The sum of the final compensation determined for each plan 3 member and the final average compensation figure used as the basis for determining the judge's retirement allowance as a member of a county retirement plan or a retirement system that was established pursuant to the municipal employees retirement act of 1984, 1984 PA 427, MCL 38.1501 to 38.1555, or that is subject to 1980 PA 443, MCL 38.841 to 38.846, shall not exceed the judge's total annual salary payable from all sources at the time of his or her retirement.

(4) For purposes of subsections (1) and (2), the state base salary of a judge of the probate court who is a plan 3 member is equal to the salary paid pursuant to section 821 of the revised judicature act of 1961, 1961 PA 236, MCL 600.821.

(5) The department or the reporting unit shall deduct the member's required contribution for participation in the provisions of subsections (1) and (2) and section 504a from the member's compensation and shall transfer the contributions to the retirement system.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000

***** 38.2504a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED *****

**38.2504a Plan 3 member; election; filing; manner; payment; definitions; applicability of section.**

Sec. 504a.

(1) A judge who is a plan 3 member may make the election prescribed in this subsection during the election period. A judge who makes the election under this subsection elects to convert the balance of the difference between the state base salary and the maximum statutory salary established by the revised judicature act that is not already converted under section 504. The election is effective on the conversion date and converts the described balance as an addition to the judge's state base salary for the purposes of computation of a retirement allowance under this act. The retirement system shall accept written elections from plan 3 members during the election period. A member who does not make a written election or who does not file the election during the election period remains at the same level of state salary standardization payment conversion previously elected under this section, if any. A member who files a written election during the election period also elects to convert the balance of the difference between the state base salary and the maximum statutory salary established by the revised judicature act that is not already converted under section 504 for all years of credited service through June 30, 1998. The retirement system shall determine the method by which a member shall make a written election under this subsection. Within 30 days after the request of a member, a reporting unit shall disclose to the member the effect an election under this subsection, if made, will have on the member's right as a retirant to health care benefits and any other benefits from that reporting unit. The election provided in this subsection is not intended to impair a member's right to receive health care benefits or other insurance benefits from a reporting unit.

(2) A member who makes the election under subsection (1) shall make a payment of an amount equal to the sum of the following:

(a) The actuarial cost of the conversion under subsection (1) as calculated by the retirement system, which shall be based upon methods adopted by the department and the retirement system's actuary in consultation with the retirement board.

(b) The member contributions that would have been paid from July 1, 1999 through the conversion date, as if the member had made the conversion under subsection (1) and had been a plan 3c member as of July 1, 1999.

(c) Interest on any amounts determined under subdivisions (a) and (b), from July 1, 1999 through the conversion date, based upon 8% effective annual interest, compounded annually.

(3) The retirement system shall accept as full or partial payment of the amount required to be paid by a member

under subsection (2) an amount determined and transferred by any tax-qualified plan or rollover IRA, if any, including the municipal employees retirement system, 1984 PA 427, MCL 38.1501 to 38.1555. Transfer under this subsection shall occur on or before the conversion date, unless extended by the department for good cause After receipt of the amount that is transferred to the retirement system under this subsection, the member shall pay to the retirement system under this subsection the balance of the amount due, if any, as calculated under subsection (2). Beginning with the pay period following the conversion date, the member shall pay the total amount due or the balance due, as appropriate, under subsection (2) by equal payments through deductions from compensation as provided in section 504 over a period not to exceed 100 pay periods. However, a member who files an application to retire and who has an outstanding balance due under subsection (2) shall pay the balance due on or before his or her retirement allowance effective date. A member may elect to have the deductions from compensation under this subsection be made on a salary reduction basis, which deductions shall be picked up by the member's employer. Contributions picked up under this section on a salary-reduction basis are not included as gross taxable income of the contributor.

(4) As used in this section:

(a) "Conversion date" means the first pay period following December 31, 2000 or a date 90 days following the close of the election period, whichever is later.

(b) "Election period" means an election period of not less than 60 days as determined by the retirement system following the notification from the internal revenue service described in subsection (5).

(5) This section does not apply until the department receives notification from the United States internal revenue service that the conversion of the balance of the difference between the state base salary and the maximum statutory salary established by the revised judicature act under this section does not cause the retirement system to be disqualified for tax purposes.

(6) Contributions shall not be picked up by this state pursuant to this section until the department receives notification from the United States internal revenue service that such contributions will not be included as gross income of the member until they are distributed or made available to the member, retirant, retirement allowance beneficiary, or refund beneficiary.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

### 38.2505 Salary standardization payment as wages for social security reporting purposes.

Sec. 505.

For a member who is a judge and who is receiving a state-paid salary, the salary standardization payment is considered wages for social security reporting purposes to the extent that a judge's state base salary is less than the social security maximum reportable wage for the calendar year. The department shall deduct the judge's employee contribution on the social security maximum reportable wage for the calendar year from the judge's salary paid by this state.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2506 Election of straight life retirement allowance or optional retirement allowance.

Sec. 506.

(1) Upon application for retirement under this act, a member or vested former member who meets the requirements of section 501 may elect to receive a retirement allowance as a straight life retirement allowance or as an optional retirement allowance under 1 of the payment options provided in this section. The member or vested former member shall file a written election with the retirement system before the effective date of the retirement allowance. If a member or vested former member fails to file a written election under this subsection, the member or vested former member is considered to have elected the straight life retirement allowance under section 503. The member or vested former member shall designate in the written election a retirement allowance beneficiary that shall be either the spouse, brother, sister, parent, or child, including an adopted child, of the member or vested former member. The amount of retirement allowance under options A and B are the actuarial equivalent of the

amount of the straight life retirement allowance calculated under section 503. The options are as follows:

(a) Option A. The retirement system shall pay an optional retirement allowance to the retirant for life with the provision that upon the retirant's death, payment of the optional retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or vested former member designated in writing and filed with the retirement system at the time of election of the option.

(b) Option B. The retirement system shall pay an optional retirement allowance for life to the retirant with the provision that upon the retirant's death, payment of 1/2 of the optional retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or vested former member designated in writing and filed with the retirement system at the time of election of the option.

(2) Except as otherwise provided in this section, a retirant shall not change the election of a payment option or the designation of a retirement allowance beneficiary under subsection (1) after the retirement allowance effective date. If a retirant who elected a payment option under subsection (1)(a) or (b) dies, the retirement system shall pay the optional retirement allowance to the option A beneficiary or option B beneficiary effective the first day of the month following the retirant's death. If the option A or option B beneficiary designated under this section is the surviving spouse of the deceased retirant, the surviving spouse may elect to receive a retirement allowance as provided in section 508 in lieu of the survivor portion of the optional form of payment elected by the retirant under this section.

(3) If the option A beneficiary or option B beneficiary predeceases the retirant, the retirant's benefit reverts to a straight life retirement allowance and the retirement system shall begin payment of the straight life retirement allowance to the retirant effective the first day of the month following the option A or option B beneficiary's death.

(4) The retirement system shall provide each member or vested former member who applies for retirement a written explanation of the optional forms of payment under this section before the member or vested former member retires.

(5) If a retirant receiving an optional retirement allowance under this section is divorced from the spouse who had been designated the option A or option B beneficiary, the retirement system shall consider the election of the optional form of payment option under this section void if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in the public employee retirement benefit protection act and dated after June 27, 1991 provides that the election of the optional form of payment option under this section is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of an optional form of payment under this section is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a straight life retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement allowance shall revert to a straight life retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(6) A member who continues active employment on or after the date he or she acquires 8 years of credited service or who becomes eligible for a retirement allowance as a vested former member under section 501, whichever occurs first, may file a written election with the retirement system to elect option A as provided in subsection (1)(a). The member or vested former member shall nominate a retirement allowance beneficiary in the written election in the same manner as if the member or vested former member were then retiring from service. If the beneficiary's death or divorce from the member or vested former member occurs before the effective date of the member's or vested former member's retirement, the member's or vested former member's election of option A and nomination of retirement allowance beneficiary is automatically revoked and the member or vested former member may again elect option A and nominate a retirement allowance beneficiary at any time before the effective date of retirement. If a member or vested former member who has made an election and nominated a retirement allowance beneficiary as provided in this subsection dies before the effective date of his or her retirement, then the retirement allowance beneficiary shall receive the retirement allowance that he or she would have been entitled to receive under option A if the member or vested former member had been retired on the date of the member's or vested former member's death. Except as otherwise provided by subsection (7), if a member or vested former member who has made an election under this subsection subsequently retires under this act, his or her election of option A takes effect at the time of retirement. The member or vested former member, before the effective date of retirement, but not after the effective date of retirement, may revoke his or her previous election of option A and elect to receive his or her retirement allowance as a straight life retirement allowance or under option B as provided for in subsection (1). This subsection does not apply on and after the date the settlement agreement in the case of Michigan judges assn v Treasurer of the State of Michigan, case no. 98-DT-72771-CV (Ed Mi), becomes of no further force or effect, is rendered null and void, or is otherwise terminated.

(7) If a member, vested former member, retiring member, or retiring vested former member is married on the effective date of the retirement allowance, an election under this section, other than an election of a payment option under subsection (1) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse. However, this requirement may be waived by the retirement board if the signature of a spouse cannot be obtained because of extenuating circumstances. As used in this subsection, "spouse" means the person to whom the member, vested former member, retiring member, or retiring vested former member is married on the effective date of the retirement allowance.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

**38.2507 Disability; determination by medical adviser; notice to appeal; determination by medical committee; refusal to submit to medical examination; payment.**

Sec. 507.

(1) A member who has 8 or more years of credited service and who is physically or mentally totally disabled to perform his or her duties is entitled to retire due to disability as provided in this section. A member who has 8 or more years of credited service agrees to submit himself or herself to a medical examination by or under the direction of the medical adviser as required by the retirement board under this subsection. Upon written application for retirement due to disability filed with the retirement system by the member, the chairperson of the judicial tenure commission, or the chief justice of the supreme court, the retirement board shall request that the member submit to a medical examination by or under the direction of the medical adviser.

(2) The medical adviser, after a medical examination of the member, shall determine if the member is physically or mentally totally disabled to perform his or her duties, if the incapacity is likely to be permanent, and if the member should be retired due to disability. The medical adviser shall file a written report of the medical adviser's findings and shall certify his or her determination to the retirement system. The retirement board shall notify the member of the medical adviser's determination under this subsection by registered mail sent to his or her last known residence address.

(3) The member, before the expiration of 30 days after the date of the notice by the retirement board under subsection (2), may file a written notice to appeal the medical adviser's determination with the retirement system. If a notice to appeal the medical adviser's determination is filed by the member under this subsection, the retirement board shall establish a medical committee to hear the appeal. The medical committee consists of a physician appointed by the retirement board, a physician appointed by the member, and a physician appointed by the first 2 physicians appointed under this subsection. The medical committee, after a medical examination of the member, shall determine if the member is physically or mentally totally disabled to perform his or her duties, if the incapacity is likely to be permanent, and if the member should be retired due to disability. The medical committee shall file a written report of the medical committee's findings and shall certify the medical committee's determination to the retirement system. The retirement board shall notify the member of the medical committee's determination under this subsection by registered mail sent to his or her last known residence address. The determination by a majority of the medical committee is binding upon the retirement system and the member.

(4) A member who refuses to submit to a medical examination required under this section and the refusal continues for 90 days or more; or a member for whom it is determined under this section that he or she should retire due to disability and who fails to retire before the expiration of 60 days after the retirement board sends notice of that determination under subsection (2) or (3), whichever is later, forfeits for himself or herself and his or her heirs and beneficiaries all rights in and to retirement benefits under this act except the refund of accumulated contributions.

(5) Upon determination under this section that a member who has 8 or more years of credited service is physically or mentally totally disabled to perform his or her duties, the retirement board shall retire the member due to disability. Upon retirement due to disability under this section, the retirement system shall pay to the disability retirant a retirement allowance calculated pursuant to section 503. At the time of retirement under this section, the member may elect to be paid an optional retirement allowance under an optional form of payment provided in section 506 in lieu of the straight life retirement allowance under section 503.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2508 Death of member with 8 or more years of credited service or of vested former member before retirement; payment of retirement allowance.**

Sec. 508.

(1) If a member who has 8 or more years of credited service dies while in office or if a vested former member dies before retirement, the retirement system shall pay the following retirement allowance as applicable:

(a) If a member with 8 or more years of credited service dies while in office, or if a vested former member dies before retirement, and the member has an election of option A in force as provided in section 506(6), then the retirement allowance beneficiary shall receive the retirement allowance that he or she would have been entitled to receive under option A if the member or vested former member had been retired on the date of the member's or vested former member's death.

(b) If a member with 8 or more years of credited service dies while in office, or if a vested former member dies before retirement, and the member or vested former member does not have an election of option A in force as provided in section 506(6), and leaves a surviving spouse, the spouse shall receive a retirement allowance computed in the same manner as if the member had retired effective the day before the date of his or her death, elected option A, and nominated the spouse as retirement allowance beneficiary.

(2) If the deceased vested former member had met the service requirements of section 501(1)(d), the surviving spouse may elect to receive a permanently reduced retirement allowance equal to the amount the deceased vested former member would have received as reduced by section 501(1)(d).

(3) If a retirant dies, the retirement system shall pay the following retirement allowance as applicable:

(a) If the retirant elected a straight life retirement allowance under section 506, the surviving spouse shall receive 1/2 the amount of the retirement allowance computed under section 503, based upon the deceased member's final compensation and credited service.

(b) If the retirant elected an optional retirement allowance under section 506, the retirement allowance beneficiary shall receive a retirement allowance as provided under section 506(1)(a) or (b).

(4) If the deceased member, vested former member, or retirant does not leave a surviving spouse or if the surviving spouse dies after the member's, vested former member's, or retirant's death, the retirement system shall pay to each of the member's, vested former member's, or retirant's unmarried children under the age of 19 years a retirement allowance equal to an equal share of the amount of the retirement allowance payable to a surviving spouse under subsection (1)(b) or subsection (3)(a).

(5) The retirement system shall begin payment of a retirement allowance under this section to a surviving beneficiary of a deceased member or retirant under this section on the first day of the month following the month in which the member or retirant dies. The retirement system shall begin payment of a retirement allowance to a surviving beneficiary of a deceased vested former member on the first day of the month following the month in which the vested former member otherwise would have been eligible to begin receiving benefits under section 501. The retirement system shall terminate payment of a retirement allowance to a surviving beneficiary upon the surviving beneficiary's death.

(6) The retirement system shall begin payment of a retirement allowance to a child of a deceased member or retirant under this section on the first day of the month following the month in which the member or retirant dies without a surviving spouse or the first day of the month following the month in which the surviving spouse dies, whichever is later. The retirement system shall begin payment of a retirement allowance to a child of a deceased vested former member under this section on the first day of the month following the month in which the vested former member dies, the first day of the month following the month in which the vested former member could have retired under section 501 if there is no surviving spouse, or the first day of the month following the month in which the surviving spouse of the vested former member dies, whichever is later. The retirement system shall terminate payment of a retirement allowance to a child upon his or her adoption, marriage, becoming 19 years old, or death, whichever occurs first. However, the retirement system shall continue payment of a retirement allowance to a child who is attending school full-time during the period of full-time school attendance, but in no case beyond the child becoming 25 years old. Upon termination of a child's retirement allowance under this subsection, the retirement system shall divide that portion of the retirement allowance into equal shares and add it to the retirement allowance being paid to the remaining eligible children, if any, effective the first day of the month following termination of payment to the ineligible child.

(7) The retirement system shall not pay a retirement allowance under this section if an optional retirement allowance is being paid or will become payable to an option A beneficiary or option B beneficiary under section 506 or if a refund of accumulated contributions is paid under section 405.

(8) The surviving spouse of a deceased member may elect a refund of accumulated contributions in lieu of a retirement allowance under this section. The surviving spouse of a deceased retirant may elect to be paid a retirement allowance under this section in lieu of the survivor portion of the optional form of payment elected by

the retirant under section 506.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1999, Act 215, Eff. May 30, 2000 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002

### 38.2509 Hospital and medical-surgical and sick care benefits; payment of premiums.

Sec. 509.

(1) The retirement system shall pay the premium for hospital and medical-surgical and sick care benefits for a retirant who, as a member, served after January 1, 1983 as a justice of the supreme court, judge of the court of appeals, or a state official, or for his or her retirement allowance beneficiary who elects coverage in the state group health insurance plan, to the same extent as is provided for retirants and retirement allowance beneficiaries of the state employees' retirement system created by the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.1 to 38.48 of the Michigan Compiled Laws.

(2) The retirement system shall pay the premium under subsection (1) only if section 305(l)(a) requires member contributions for hospital and medical-surgical and sick care benefits.

**History:** 1992, Act 234, Eff. Mar. 31, 1993
**Compiler's Notes:** In subsection (2), the reference to "section 305(l)(a)" evidently should read "section 305(1)(a)."

### 38.2510 Effective date of retirement before January 1, 1980; exception; supplement.

Sec. 510.

(1) Effective June 1, 1996, the retirement allowance payable to a retirant or beneficiary of a deceased retirant whose effective date of retirement was before January 1, 1980, except a retirant or beneficiary of a deceased retirant who was a member of the former judges retirement system before September 8, 1961, is supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| January 1, 1979 to December 31, 1979 | 11% |
| January 1, 1978 to December 31, 1978 | 12% |
| January 1, 1977 to December 31, 1977 | 13% |
| January 1, 1976 to December 31, 1976 | 14% |
| January 1, 1975 to December 31, 1975 | 15% |
| January 1, 1974 to December 31, 1974 | 16% |
| January 1, 1973 to December 31, 1973 | 17% |
| January 1, 1972 to December 31, 1972 | 18% |
| January 1, 1971 to December 31, 1971 | 19% |
| January 1, 1970 to December 31, 1970 | 20% |
| January 1, 1969 to December 31, 1969 | 21% |
| January 1, 1968 to December 31, 1968 | 22% |
| January 1, 1967 to December 31, 1967 | 23% |
| Before January 1, 1967 | 24% |

(2) The recalculated retirement allowance shall be the basis on which future adjustments to the retirement allowance are calculated.

(3) The supplement provided by this section shall be calculated pursuant to subsection (1) and shall be paid before October 1, 1996. However, for a retirant or beneficiary of a deceased retirant who is eligible to receive a supplement under this section, who is receiving a retirement allowance pursuant to service credited under the former judges retirement system, and who is receiving a retirement allowance pursuant to service credited under the former probate judges retirement system, the retirement system, pursuant to this section, shall only supplement the

retirement allowance that is the largest in amount. If a retirant dies before October 1, 1996 and no benefits become payable under section 506 or 508, the retirant's retirement allowance shall not be supplemented under this section.

(4) This section does not apply to a retirant or beneficiary of a deceased retirant who received a supplement under section 16a of the former probate judges retirement system.

**History:** Add. 1996, Act 350, Imd. Eff. June 28, 1996

### 38.2511 Effective date of retirement before January 1, 1980; supplement; minimum amount; retirant or beneficiary receiving annuity or allowance from another publicly supported system; former probate judges retirement system.

Sec. 511.

(1) Except as provided in subsection (2), the retirement allowance payable to a retirant whose effective date of retirement was before January 1, 1980 or to an option A beneficiary of a deceased retirant whose effective date of retirement was before January 1, 1980, as supplemented by section 510 if applicable, shall not be less than $10,000.00 per annum if the retirant had at least 8 years of service credited under the former judges retirement system or the former probate judges retirement system. Except as provided in subsection (2), the retirement allowance payable to a beneficiary, other than an option A beneficiary, of a deceased retirant whose effective date of retirement was before January 1, 1980, as supplemented by section 510 if applicable, shall not be less than $8,500.00 per annum if the retirant had at least 8 years of service credited under the former judges retirement system or the former probate judges retirement system. The payment of an increased retirement allowance under this section is effective on October 1, 1996 and is not payable for any month beginning before October 1, 1996. However, for a retirant or beneficiary of a deceased retirant who is eligible to receive an increased retirement allowance under this section, who is receiving a retirement allowance pursuant to service credited under the former judges retirement system, and who is receiving a retirement allowance pursuant to service credited under the former probate judges retirement system, the retirement system, pursuant to this section, shall only increase the retirement allowance that is the largest in amount. If, for a retirant or option A beneficiary, that retirement allowance is $10,000.00 or more; or if, for a beneficiary other than an option A beneficiary, that retirement allowance is $8,500.00 or more, the retirant or beneficiary is not entitled to receive an increased retirement allowance under this section.

(2) For a retirant or beneficiary of a deceased retirant who is eligible to receive an increased retirement allowance under subsection (1) and who is receiving an annuity or retirement allowance from another publicly supported retirement system attributable to the same years of service, other than federal social security benefits, the retirement allowance payable to that retirant or beneficiary shall be the amount specified in subsection (1) minus the amount of the annuity or retirement allowance payable from the other publicly supported retirement system, but not less than the retirement allowance as supplemented by section 510, if applicable, or not less than the annuity payable under this act on September 30, 1996.

(3) This section does not apply to a retirant or beneficiary of a deceased retirant who received an increased annuity under section 16b of the former probate judges retirement system.

**History:** Add. 1996, Act 350, Imd. Eff. June 28, 1996

### 38.2512 Supplemented retirement allowance.

Sec. 512.

(1) A person may elect to receive a supplemented retirement allowance if the person meets all of the following requirements:

(a) The person is a retirant or beneficiary of a deceased retirant whose effective date of retirement was on or after January 1, 1980 but before January 2, 1993.

(b) The person is not a retirant or beneficiary of a deceased retirant who was a member of the former judges retirement system before September 8, 1961.

(c) The person executes and submits to the retirement system an election form with a waiver agreement in form and substance as required under subsection (7).

(2) Except as otherwise provided in this section, effective June 1, 2003, a person who meets the requirements of subsection (1) and who timely files a fully executed waiver agreement with the retirement system on a form furnished by the retirement system, on or after January 1, 2003, but not later than April 1, 2003, shall receive a retirement allowance supplemented as follows:

| Effective Date of Retirement | Percent of Increase |
|---|---|
| January 1, 1992 to January 1, 1993 | 3.5% |
| January 1, 1991 to December 31, 1991 | 4.0% |
| January 1, 1990 to December 31, 1990 | 4.5% |
| January 1, 1989 to December 31, 1989 | 5.0% |
| January 1, 1988 to December 31, 1988 | 5.5% |
| January 1, 1987 to December 31, 1987 | 6.0% |
| January 1, 1986 to December 31, 1986 | 6.5% |
| January 1, 1985 to December 31, 1985 | 7.0% |
| January 1, 1984 to December 31, 1984 | 7.5% |
| January 1, 1983 to December 31, 1983 | 8.0% |
| January 1, 1982 to December 31, 1982 | 8.0% |
| January 1, 1981 to December 31, 1981 | 8.0% |
| January 1, 1980 to December 31, 1980 | 8.0% |

(3) The supplemental retirement allowance calculated under subsection (2) shall be the basis on which any future adjustments to the retirement allowance are calculated.

(4) For a person who meets the requirements of subsection (1) and who filed a fully executed waiver agreement by April 1, 2003, the supplement provided by this section shall be calculated under subsection (2) and shall be paid to retirants or beneficiaries of deceased retirants before October 1, 2003. For a person who meets the requirements of subsection (1) who did not file a fully executed waiver agreement with the retirement system by April 1, 2003, and who files a fully executed waiver agreement with the retirement system by January 30, 2004, the supplement provided by this section shall be calculated under subsection (2) and shall be paid to retirants or beneficiaries of deceased retirants before April 1, 2004.

(5) If a retirant dies before October 1, 2003 and no benefits become payable under section 506 or 508, the retirant's retirement allowance shall not be supplemented.

(6) For purposes of this section, a person who elects to receive a retirement allowance supplemented under this section shall be deemed to have done all of the following:

(a) Waived any past, present, or future claim or claims asserted by the plaintiffs in the case of Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI).

(b) Waived any past, present, or future claim or claims that arise from facts that form the basis of Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), including, but not limited to, asserted violations of the equal protection clause of section 1 of Amendment XIV of the constitution of the United States, section 2 of article I of the state constitution of 1963, section 604(6), the wasting trust doctrine, and fiduciary duties.

(c) Agreed that he or she will not take any action to question the legal effect of, amend, or rescind the waiver created by his or her election under this section.

(7) The waiver agreement agreed to, executed, and submitted by a person electing a retirement allowance supplemented under this section shall read as follows:

"1. _____ (Name of person) desires to settle and compromise, in their entirety, any past, present, or future claim or claims, either asserted by the plaintiffs in the case of Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), or that arise from the facts forming the basis of that case, including, but not limited to, asserted violations of the equal protection clause of the fourteenth amendment of the United States constitution, section 2 of article I of the state constitution of 1963, section 604(6) of the judges retirement act of 1992, 1992 PA 234, MCL 38.2604, the wasting trust doctrine, and fiduciary duties.

2. _____ (Name of person) agrees to settle and compromise these claims for the consideration of receiving a retirement allowance supplemented under section 512 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2512.

3. _____ (Name of person) waives any right or interest in any past, present, or future claim or claims, either asserted by the plaintiffs in the case of Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), or that arise from the facts forming the basis of that case.

4. _____ (Name of person) will submit a notarized copy of this waiver agreement to the retirement system no later than 5 p.m. eastern standard time on January 30, 2004 and agrees to not take any action to question the legal effect of, amend, or rescind this waiver agreement.

5. _____ (Name of person) expressly agrees and understands that nothing in this agreement limits the rights of the state or its agencies, employees, and agents to any privilege, immunity, or defense that would otherwise have been available if the claims or potential claims had been actually litigated in any forum.

6. _____ (Name of person) agrees that, if this waiver agreement is challenged, invalidated, or otherwise found to be unenforceable, any retirement supplement under section 512 shall cease for any person for which the waiver is challenged, invalidated, or otherwise determined to be unenforceable.

7. _____ (Name of person) agrees not to fund, offer advice regarding, or otherwise participate in the case known as Ernst v Roberts, Case No. 01-CV-73738-DT (ED MI), or any successor case raising similar claims, and further agrees to oppose class certification and agrees to opt out of any such class in any such cases and to inform the presiding judge of that opposition and desire to opt out.".

(8) Nothing contained in this section shall create or be construed to create any of the following:

(a) Any obligation or liability of the state or the retirement system to any person who does not timely file or enter a form and waiver agreement under this section.

(b) Any admission of liability to any person in any litigation or future litigation.

(c) Any waiver of any privilege, immunity, or defense that is or would have been available to this state or its agencies, employees, or agents in any litigation or future litigation with any person.

(9) A person who meets the requirements of subsection (1) but did not file a fully executed waiver agreement with the retirement system by April 1, 2003 shall have until January 30, 2004 to execute and file the waiver agreement. A person who filed a fully executed waiver agreement with the retirement system by April 1, 2003 is not eligible to execute and file a waiver agreement under this subsection.

**History:** Add. 2002, Act 675, Imd. Eff. Dec. 26, 2002 ;-- Am. 2003, Act 190, Imd. Eff. Oct. 31, 2003

Article VI

### 38.2601 False statement or violation as misdemeanor; penalty.

Sec. 601.

A person who, with intent to deceive, makes a false statement in a report or record required under this retirement system, or who, with intent to deceive, violates this act or a rule promulgated under this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $500.00, or both.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2602 Change or error in records; adjustment.

Sec. 602.

If a change or error in the records of the retirement system results in a retirant, retirement allowance beneficiary, or refund beneficiary receiving from the retirement system more or less than the retirant, retirement allowance beneficiary, or refund beneficiary would have been entitled to receive had the records been correct, the retirement system shall as far as practical correct the error, and may adjust the payment to provide an actuarial equivalent of the benefit to which the retirant, retirement allowance beneficiary, refund beneficiary, estate, or legal representative was correctly entitled. The retirement system shall not make an adjustment in benefits for an error totaling $20.00 or less annually.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2603 Retirement board member or employee; prohibited acts.**

Sec. 603.

Except as provided in this act, a retirement board member or employee of the retirement board shall not have any interest, direct or indirect, in the gains or profits of any investments made of retirement system funds. Except as provided in section 202, a board member shall not, directly or indirectly, receive any pay for his or her services. A board member or person connected with the retirement board directly or indirectly, for himself or herself or as an agent or partner of others, shall not borrow any of the retirement system funds or deposits, or in any manner use retirement system funds except to make current and necessary payments that are authorized by the retirement board. A board member or employee of the retirement board shall not become an endorser of surety or become in any manner an obligor for money loaned by or borrowed from the retirement board.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

**38.2604 Intent of act; employer-financed benefits; limitations; use of assets; returning post-tax member contributions; beginning date of distributions; minimum distribution requirements; termination of retirement system; election to rollover to retirement plan; interest rate; consideration of compensation; qualified military service.**

Sec. 604.

(1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, which 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, 26 USC 401, and that the trust be an organization exempt from taxation under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill the intent of this subsection.

(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 must 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 applies 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 must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance 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 on retirement, under Internal Revenue Service regulations and approved Internal Revenue Service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions must 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, apply to this act and must be administered in accordance with a reasonable and good faith interpretation of the required minimum distribution requirements for all years in which the required minimum distribution requirements apply to this act.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance 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 after December 31, 1992.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarially assumed interest rate must be determined by the director of the department and the retirement board in consultation with the actuary using the mortality tables adopted by the department and the retirement board.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system must 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 an individual who first becomes a member of the retirement system after September 30, 1996.

(10) 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 after December 11, 1994. Beginning on 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 is treated as having resumed and then terminated employment on account of death.

**History:** 1992, Act 234, Eff. Mar. 31, 1993 ;-- Am. 1995, Act 193, Imd. Eff. Nov. 7, 1995 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2008, Act 514, Imd. Eff. Jan. 13, 2009 ;-- Am. 2018, Act 335, Imd. Eff. July 2, 2018

### 38.2605 Effect of proceedings, rights, and liabilities existing under former judges retirement system or former probate judges retirement system.

Sec. 605.

All proceedings pending and all rights and liabilities existing, acquired, or incurred under the former judges retirement system or former probate judges retirement system at the time this act takes effect are saved. Those proceedings shall be consummated pursuant to the law in effect when the proceedings were commenced. Those rights and liabilities shall be preserved pursuant to the law in effect on the day immediately preceding the effective date of this act. To the extent that either the kinds of benefits available under the former judges retirement system or former probate judges retirement system as in effect on the day immediately before the effective date of this act or the manner of calculating those benefits under the former judges retirement system or former probate judges retirement system results in a greater benefit of any kind than would otherwise be available under this act or include a benefit not otherwise available under this act, the determinations of those kinds of benefits available and the manner of calculating those benefits shall be made pursuant to the former judges retirement system or former probate judges retirement system for those members who participated in the retirement system as set forth in the former judges retirement system or former probate judges retirement system before the effective date of this act.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2606 Transfer of assets, rights, and obligations under former retirement systems to judges retirement system.

Sec. 606.

All assets, rights, and obligations under the former judges retirement system and former probate judges retirement system are transferred to this retirement system. These assets, rights, and obligations shall continue to be accounted for in the various reserves created under this retirement system and all rights and liabilities existing under the former judges retirement system and former probate judges retirement system are preserved.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2607 Repeal of MCL 38.801 to 38.831, 38.901 to 38.933, and 600.2530a.

Sec. 607.

(1) Act No. 198 of the Public Acts of 1951, being sections 38.801 to 38.831 of the Michigan Compiled Laws and Act No. 165 of the Public Acts of 1954, being sections 38.901 to 38.933 of the Michigan Compiled Laws, are repealed.

(2) Section 2530a of Act No. 236 of the Public Acts of 1961, being section 600.2530a of the Michigan Compiled Laws, is repealed.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

### 38.2608 Conditional effective date.

Sec. 608.

This act shall not take effect unless House Bill No. 6097 of the 86th Legislature is enacted into law.

**History:** 1992, Act 234, Eff. Mar. 31, 1993

## Article VII

### 38.2651 Participation in Tier 1 or Tier 2 by member, vested former member, or former nonvested member; election; writing; irrevocability; method; election subject to domestic relations order act; disqualification for tax purposes; election not implemented due to court order.

Sec. 701.

(1) The retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable if the election has taken effect and a transfer has occurred under section 702. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on May 31, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

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

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

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

(2) If an individual who was a vested former member on March 30, 1997, or an individual who was a former nonvested member on March 30, 1997 becomes a judge or state official and is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a vested former member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a vested former member or a former nonvested member during the period beginning on the date of the individual's eligibility for membership and ending upon the expiration of 60 days after the date of that eligibility. A vested former member or former nonvested member who makes and files a written election to remain a member

of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A vested former member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. Subject to section 701b, a vested former member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

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

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

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

(d) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(3) After consultation with the retirement system's actuary and the retirement board, the department of management and budget shall determine the method by which a member, vested former member, or former nonvested member shall make a written election under this section. If the member, vested former member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(4) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

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

(6) A judge of the circuit court, probate court, or district court who was a member on March 30, 1997 and who either made an election under this section but was not able to have the election implemented due to the restraining order entered in Michigan judges assn v Treasurer of the state of Michigan, case No. 98-DT-72771-CV (Ed Mi) and has retired on or after June 30, 1998 and before the opening of the election window described in section 701a(2), or who retired before June 30, 1998 may make an election in the manner and under the conditions prescribed in the stipulated order regarding temporary restraining order in Michigan judges assn v Treasurer of the state of Michigan, case no. 98-DT-72771-CV (Ed Mi), entered on February 18, 1999. Notwithstanding any other provision of this section to the contrary, the department and the Tier 2 plan administrator shall determine the method by which this subsection is implemented.

(7) A judge of the circuit court, probate court, or district court who was a member on March 30, 1997 and who made an election under this section but was not able to have the election implemented due to the restraining order entered in Michigan judges assn v Treasurer of the state of Michigan, case No. 98-DT-72771-CV (Ed Mi) shall be considered to have made the election under section 701a to terminate membership in Tier 1 and become a qualified participant in Tier 2. The method of implementing this subsection and any disputes regarding this implementation shall be resolved by the plan administrator.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

***** 38.2651a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED *****

**38.2651a Participation of judge of circuit court, probate court, or district court in Tier 1 or Tier 2; election; window of opportunity; method; disqualification for tax purposes.**

Sec. 701a.

(1) Except as otherwise provided in subsection (3), the retirement system shall provide an opportunity for each judge of the circuit court, probate court, or district court who was a member on March 30, 1997 to elect in writing to terminate membership in Tier 1 and elect to become a qualified participant in Tier 2. This section does not apply

to an individual who was a member on March 30, 1997 and whose election to terminate membership in Tier 1 and become a qualified participant in Tier 2 under section 701 has already taken effect and the transfer has occurred. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period prescribed by the Tier 2 plan administrator under subsection (2). A member who does not make a written election or who does not file the election during the period specified in subsection (2) continues to be a member of Tier 1. Subject to section 701b, a member who makes and files a written election under this subsection elects to do all of the following:

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

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

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

(d) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(2) The Tier 2 plan administrator shall establish a 60-day window for the members described in subsections (1) and (3) to make the election described in subsection (1) or (3). The Tier 2 plan administrator shall establish the 60-day window as soon as possible after confirmation from the office of retirement services that all necessary notifications and calculations of actuarial present values have been made, but not later than June 1, 2000.

(3) This subsection applies to a judge of the circuit court, probate court, or district court who was a vested member of Tier 1 on March 30, 1997 and who terminates the employment upon which that membership is based after March 30, 1997 but before the opening day of the 60-day window described in subsection (2). An individual described in this subsection may elect in writing to terminate membership in Tier 1 and elect to receive a distribution from Tier 1. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a member during the 60-day window period. A member described in this subsection who does not make a written election or who does not file the election during the period specified in subsection (2) continues to be a member or vested former member of Tier 1. A member who makes and files a written election under this subsection to terminate membership in Tier 1 elects to do all of the following:

(a) Cease to be a member of Tier 1 effective 12 midnight on the day immediately preceding the date of the termination of employment.

(b) Except as otherwise provided in this subdivision, waive all of his or her rights to a pension, an annuity, a retirement allowance, an insurance benefit, or any other benefit under Tier 1 effective 12 midnight on the date described in subdivision (a). This subdivision does not affect an individual's right to health benefits provided under this act pursuant to section 509.

(c) Waive the calculation of any actuarial present value based upon any salary increases that occur after December 31, 1998.

(4) After consultation with the retirement system's actuary and the retirement board, the department of management and budget shall determine the method by which a member, vested former member, or former nonvested member shall make a written election under this section. If the member, vested former member, or former nonvested member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the retirement board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

(5) An election under this section is subject to the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

(6) If the department of management and budget receives notification from the United States internal revenue service that this section or any portion of this section will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

***** 38.2651b THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED *****

**38.2651b Election pursuant to MCL 38.2651 or MCL 38.2651a.**

Sec. 701b.

(1) A member who makes and files a written election under section 701a(1) or an individual who makes and files a written election under section 701(2) shall at the time of that election also make an election to do 1 of the following:

(a) To have 100% of his or her salary that is paid both directly and indirectly by this state for the position he or she holds be considered his or her salary in Tier 2.

(b) To have the portion of his or her salary that is considered compensation under Tier 1 on the day before his or her election continue to be the portion that is considered his or her salary in Tier 2.

(2) A member or individual who does not make the election described in subsection (1) at the time he or she makes the election under section 701a(1) or 701(2) is considered to have made the election described in subsection (1)(b). An election made by a member or individual under this section is irrevocable.

(3) Upon the request of a member, a reporting unit shall disclose to the member the effect an election under this section, if made, will have on the member's right as a retirant to health care benefits from that reporting unit.

(4) This section shall not apply until the department of management and budget receives notification from the United States internal revenue service that the salary election under this section is acceptable.

**History:** Add. 1999, Act 215, Eff. May 30, 2000

**38.2652 Termination of membership; transfer, recomputation, and calculation by retirement system.**

Sec. 702.

(1) For a member who elects to terminate membership in Tier 1 under section 701(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before October 31, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

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

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

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

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

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

(A) Age 60.

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

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

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

(2) For each member who elects to terminate membership in the retirement system under section 701(1), the retirement system shall recompute the amount transferred under subsection (1) not later than December 31, 1998 based upon the member's actual credited service and actual final salary as of 12 midnight June 30, 1998. If the recomputed amount differs from the amount transferred under subsection (1) by $10.00 or more, not later than January 15, 1999, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the reserve for employer contributions to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight June 30, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the reserve for

employer contributions the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a vested former member who elects to terminate membership in this retirement system under section 701(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

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

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

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

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

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

(A) Age 60.

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

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

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

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

(a) Direct the state treasurer to transfer from the reserve for employer contributions to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the reserve for employer contributions the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

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

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

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

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

annually.

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

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998

***** 38.2652a THIS SECTION IS REPEALED BY ACT 215 OF 1999 EFFECTIVE ON THE DATE THE SETTLEMENT AGREEMENT IN THE CASE OF MICHIGAN JUDGES ASSN V TREASURER OF THE STATE OF MICHIGAN, CASE NO. 98-DT-72771-CV (ED MI), BECOMES OF NO FURTHER FORCE AND EFFECT, IS RENDERED NULL AND VOID, OR IS OTHERWISE TERMINATED *****

**38.2652a Termination of membership in Tier 1 pursuant to MCL 38.2651a; definitions; transfer to account in Tier 2; calculation; disqualification for tax purposes.**

Sec. 702a.

(1) For a member who elects to terminate membership in Tier 1 under section 701a(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the qualified participant's account in Tier 2 on or before the expiration of 5 months after the window prescribed in section 701a(2) is closed. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the reserve for member contributions.

(b) For a member who is vested under section 501(1) as of 12 midnight on the termination date, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the reserve for employer contributions. Except as provided in subsection (4), for the purposes of this subsection the present value of the member's accumulated benefit obligation is based upon the member's actual credited service and actual final salary as of 12 midnight on the termination date. The actuarial present value shall be computed as of 12 midnight on the termination date and shall be based on the following:

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

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

(iii) A benefit commencement age, based upon the member's credited service as of 12 midnight on the termination date. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the termination date:

(A) Age 60.

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

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

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

(2) As used in this section:

(a) "Participation date" means the date the individual becomes a qualified participant in Tier 2 as determined under section 701a(1)(b).

(b) "Termination date" means the date the individual ceases to be a member of Tier 1 as specified under section 701a(1)(a).

(3) For a member who elects to terminate membership in this retirement system under section 701a(3), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under this act to the former qualified participant's account in Tier 2 on or before the date prescribed in subsection (1) for transfers under that subsection. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the reserve for member contributions as of 12 midnight on the day immediately preceding the date of the termination of employment.

(b) The excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the reserve for employer contributions. Except as provided in subsection (4), for the purposes of this subsection the present value of the member's accumulated benefit obligation is based upon the member's actual credited service and actual final salary as of 12 midnight on the day immediately preceding the date of the termination of employment. The actuarial present value shall be computed as of 12

midnight on that date and shall be based on the following:

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

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

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the day immediately preceding the date of the termination of employment. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the day immediately preceding the date of the termination of employment:

(A) Age 60.

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

(C) The age of the member if the member's credited service equals or exceeds 25 years.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the day immediately following the date described in subdivision (a) to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(4) For the purposes of subsections (1) and (3), the calculation of actual present value of the member's or vested former member's accumulated benefit obligation shall be based upon methods adopted by the department and the retirement system's actuary in consultation with the retirement board, and actual final salary shall be determined as provided in section 105(4), as of 12 midnight on the date the member ceases to be a member of Tier 1 under section 701a.

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

**History:** Add. 1999, Act 215, Eff. May 30, 2000

### 38.2653 Calculation and submission of cost savings.

Sec. 703.

After consulting the retirement system's actuary, the department of management and budget shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of the amendatory act that added this section over the costs that would have been incurred by this state to fund this retirement system had the amendatory act that added this section not been implemented. The total amount of such cost savings shall be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year to the reserve for health benefits created by section 214. Any amount appropriated pursuant to this section and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 509 is 100% funded.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### 38.2654 Meanings of words and phrases; “accumulated balance” defined.

Sec. 704.

(1) For the purposes of this article, the words and phrases defined in this section and sections 705 to 710 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2655 “Employer,”“former qualified participant,” and “health benefit dependent” defined.**

Sec. 705.

(1) "Employer" means this state.

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

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

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

**38.2656 “Qualified participant,”“refund beneficiary,”“salary,” and “state treasurer” defined.**

Sec. 706.

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

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

(b) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 701 or 701a.

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

(3) "Salary" means 1 of the following:

(a) For an individual described in subsection (1)(a), 100% of his or her salary that is paid both directly and indirectly by this state for the position he or she holds.

(b) For an individual described in subsection (1)(b), the salary that he or she elects or is considered to have elected under section 701b.

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

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

**38.2657 Administration of Tier 2 by state treasurer.**

Sec. 707.

(1) The state treasurer shall administer Tier 2 and shall invest the assets of Tier 2. The state treasurer is the fiduciary and trustee of Tier 2. The state treasurer may appoint an advisory board to assist the state treasurer in carrying out his or her duties as fiduciary and trustee.

(2) The state treasurer shall determine the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(3) The state treasurer has the exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper administration of and investment of assets of Tier 2, including but not limited to managerial, professional, legal, clerical, technical, and administrative personnel or services.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2658 Hearing.**

Sec. 708.

(1) A qualified participant, former qualified participant, health benefit dependent, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the state treasurer shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An individual may be represented by counsel or other duly authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of Act No. 306 of the Public Acts of 1969, being sections 24.221 to 24.264 and 24.291 to 24.292 of the Michigan Compiled Laws, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2659 Direction of investment by qualified participant, former qualified participant, and refund beneficiary.**

Sec. 709.

Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the state treasurer. The limitations on the percentage of total assets for investments provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, do not apply to Tier 2.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2660 Administrative expenses.**

Sec. 710.

The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the state treasurer.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2661 Participation in other retirement benefits plan; prohibition.**

Sec. 711.

(1) A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. This subsection does not apply to a qualified participant who makes the election under section 701b(1)(b) for that portion of his or her compensation that is not considered salary for the purposes of Tier 2. Except as otherwise provided in this act, this section does not do any of the following:

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

(b) Impair any vested right to a retirement benefit, based upon service as a judge, accrued under such a plan as of the day before he or she becomes a qualified participant in Tier 2.

(c) Impair a qualified participant's right to receive health care benefits or other insurance benefits from a reporting unit.

(2) A qualified participant consents as a condition of participation in Tier 2 that he or she shall not receive a retirement allowance or other benefit from any other public sector retirement benefits plan while holding the position that qualifies him or her for participation in Tier 2 and the other plan. A qualified participant who receives a retirement allowance in violation of this subsection forfeits his or her right to employer contributions under section 714. The employer of a qualified participant who violates this subsection shall immediately suspend employer contributions under section 714. A qualified participant who is a contributing member in a local public sector retirement benefits plan on the day before he or she becomes a qualified participant in Tier 2 and who does not have a vested right to a retirement benefit under that plan on that date may withdraw the contributions made by that participant to the local plan without violating this subsection. This subsection does not apply to a former qualified participant.

(3) Within 30 days after the request of a qualified participant, a reporting unit shall disclose to the qualified participant the effect this section or an election under section 701 or 701a, if made, will have on the member's right to health care benefits as a retirant or a vested right to a retirement benefit for service as a judge provided by that plan.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### 38.2662 Judge or state official; election not to participate or to discontinue participation in Tier 2.

Sec. 712.

An individual who first becomes a judge or state official on or after March 31, 1997 may irrevocably elect not to become a qualified participant of Tier 2 or may irrevocably elect to discontinue participation in Tier 2 by filing written notice of the election with the state treasurer. Upon receipt of the election, his or her employer shall not contribute any percentage of salary under section 714 for the individual who makes either election.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### 38.2663 Election to terminate membership in Tier 1; credit or charge to Tier 2 account.

Sec. 713.

(1) The state treasurer shall promptly credit the Tier 2 account of a qualified participant who makes an election under section 701 or 701a to terminate membership in Tier 1 with any amount transferred from Tier 1 pursuant to section 702 or 702a, as applicable.

(2) Not later than 30 days after receipt of a recomputed amount under section 702(2) or (4), the state treasurer shall charge the qualified participant's Tier 2 account for any amount of excess transfers under section 702(1) or (3) and transfer that amount to the appropriate fund in Tier 1. The state treasurer may determine which investment choice or choices within a qualified participant's Tier 2 account will be used for this purpose.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### 38.2664 Contributions by employer and participant.

Sec. 714.

(1) This section is subject to the vesting requirements of section 715.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's salary.

(3) Except as otherwise provided in this subsection, a qualified participant may periodically elect to contribute up to 3% of his or her salary to his or her Tier 2 account. Beginning April 10, 2025, a qualified participant may periodically elect to contribute up to 5% of his or her salary to his or her Tier 2 account. The qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection.

(4) A qualified participant may make contributions in addition to contributions made under subsection (3) to the qualified participant's Tier 2 account as permitted by the state treasurer and the internal revenue code. The qualified participant's employer shall not match contributions made by the qualified participant under this subsection.

(5) A qualified participant who makes a written election under section 701a may elect to contribute up to 6% of his or her salary to his or her Tier 2 account. In lieu of employer contributions under subsection (3), the qualified participant's employer shall make an additional contribution to the qualified participant's Tier 2 account in an amount equal to the contribution made by the qualified participant under this subsection. This subsection applies for a period as determined by the department that equals the time in which a Tier 1 member was not able to make contributions to the Tier 2 plan because of the temporary restraining order issued in the case of Michigan Judges Assn v Treasurer of Michigan, opinion of the United States District Court for the Eastern District of Michigan (Case No. 98-DT-72771-CV).

(6) Beginning January 1, 2002, a qualified participant who is a plan 1 member or a plan 2 member, on taking office and while he or she remains in office, shall contribute 2.0% of the qualified participant's compensation to the retirement system. The retirement system shall deposit the contribution under this subsection into the reserve for health benefits for hospital and medical-surgical and sick care benefits as provided in section 719.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1999, Act 215, Eff. May 30, 2000 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2024, Act 152, Eff. Apr. 2, 2025

**38.2665 Vesting requirements.**

Sec. 715.

(1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in the health insurance coverage provided in section 719 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 4 years of service as a qualified participant and was not a member, deferred vested member, or former nonvested member of Tier 1.

(b) The qualified participant was a member, deferred vested member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 701 or 701a, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 509.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

**38.2666 Participation in Tier 2; crediting years of service accrued under Tier 1.**

Sec. 716.

A qualified participant who was a member, deferred vested member, or former nonvested member of Tier 1 who makes an election to participate in Tier 2 pursuant to section 701 or 701a, shall be credited with the years of service

accrued under Tier 1 on the effective date of participation in Tier 2 for the purpose of meeting the vesting requirements for benefits under section 715.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 1998, Act 66, Imd. Eff. Apr. 30, 1998 ;-- Am. 1999, Act 215, Eff. May 30, 2000

### 38.2667 Refund beneficiary.

Sec. 717.

A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the state treasurer. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the state treasurer may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### 38.2668 Methods of distribution.

Sec. 718.

(1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the state treasurer, the state treasurer, in a lump sum distribution, shall distribute the accumulated balance to the legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the state treasurer.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

### 38.2669 Health insurance coverage.

Sec. 719.

(1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is vested in health benefits under section 715(2).

(b) The former qualified participant meets or exceeds the benefit commencement age employed in the actuarial present value calculation under section 702 and the service requirements that would have applied to that former participant under Tier 1 for receiving health insurance coverage under section 509, if that former participant was a

member of Tier 1.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 509, or in another plan as provided in subsection (6). A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in the manner prescribed in this section.

(3) Except as otherwise provided in subsection (6), an individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 509.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be 50% of the payments for health insurance coverage under section 509 if the former qualified participant has 4 years of service; 75% of the payments for health insurance coverage under section 509 if the former qualified participant has 5 years of service; or 90% of the payments for health insurance coverage under section 509 if the former qualified participant has 6 years of service. If the individual elects the health insurance coverage provided under section 509, the state shall transfer its portion of the amount calculated under this subsection to the reserve for health benefits created by section 214.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 715(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 509. If the individual elects the health insurance coverage provided under section 509, the state shall transfer its portion of the amount calculated under this subsection to the reserve for health benefits created by section 214.

(6) A former qualified participant or health benefit dependent who is eligible to elect health insurance coverage under this section and who elects health insurance coverage under a different plan than the plan authorized under section 509 may elect to have an amount up to the amount of the retirement system's share of the monthly health insurance premium subsidy provided in this section paid by the retirement system directly to the other health insurance plan or to a medical savings account established pursuant to section 220 of the internal revenue code, to the extent allowed by law or under the provisions and procedures of Tier 2.

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

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997

**38.2670 Distributions; exemption from tax; subject to taxation beginning January 1, 2012; right of setoff to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors.**

Sec. 720.

(1) Except as otherwise provided in this section, distributions under Tier 1 or Tier 2 from employer contributions and earnings on those employer contributions, and distributions under Tier 1 or Tier 2 from employee contributions and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax.

(2) Beginning January 1, 2012, distributions under Tier 1 or Tier 2 from employer contributions and earnings on those employer contributions, and distributions under Tier 1 or Tier 2 from employee contributions and earnings on those employee contributions, are subject to state tax.

(3) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(4) The state treasurer shall correct errors in the records and actions in Tier 2 under this act, and shall seek to

recover overpayments and shall make up underpayments.

**History:** Add. 1996, Act 523, Eff. Mar. 31, 1997 ;-- Am. 2002, Act 95, Imd. Eff. Mar. 27, 2002 ;-- Am. 2011, Act 45, Imd. Eff. May 25, 2011

## PUBLIC EMPLOYEE RETIREMENT BENEFITS FORFEITURE ACT

### Act 350 of 1994

AN ACT to provide for the forfeiture of retirement benefits by public employees under certain circumstances; to prescribe the powers and duties of certain retirement systems, state departments, courts, public officials, and public employees; and to prescribe penalties and provide remedies.

**History:** 1994, Act 350, Eff. Mar. 30, 1995

*The People of the State of Michigan enact:*

### 38.2701 Short title.

Sec. 1.

This act shall be known and may be cited as the "public employee retirement benefits forfeiture act".

**History:** 1994, Act 350, Eff. Mar. 30, 1995

### 38.2702 Definitions.

Sec. 2.

As used in this act:

(a) "Felony arising out of his or her service as a public employee" means 1 or more of the following:

(i) A felony resulting from the misuse of public funds.

(ii) A felony resulting from the receipt of a bribe or other financial benefit in that individual's capacity as a public employee.

(b) "Member" means a member, vested former member, deferred member, or participant of a retirement system.

(c) "Retirant" means an individual who has retired with a retirement benefit payable from a retirement system.

(d) "Retirement benefit" means an annuity, a retirement allowance, a pension, a benefit from employer contributions to a defined contribution plan, an optional benefit, a postretirement benefit, and any other right accrued or accruing to a member under a retirement system. Retirement benefit does not include health benefits provided to a retirant or his or her beneficiaries by a retirement system.

(e) "Retirement system" means a public employee retirement system established by this state or a political subdivision of this state.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

### 38.2703 Forfeiture of retirement rights.

Sec. 3.

A member or retirant who, before the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by a court for a felony arising out of his or her service as a public employee is considered to have breached the public trust and may have his or her rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, standing to that individual's credit in the retirement system forfeited as provided in this act. A member or retirant who, on or after the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by a court for a felony arising out of his or her service as a public employee is considered to have breached the public trust and must have his or her rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, standing to that individual's credit in the retirement system forfeited as provided in this act. This act applies only to the retirement system of which the individual was a member or retirant at the time the felony was committed and only to the retirement system established by the entity affected by the felony.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

**38.2704 Court; forfeiture order; contents; delivery to retirement system.**

Sec. 4.

(1) If a member or retirant, before the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of his or her service as a public employee, the court may order forfeiture as provided in this section. If a member or retirant, on or after the effective date of the amendatory act that added section 4a, is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of his or her service as a public employee, the court must order forfeiture as provided in this section. If a court orders forfeiture under this section, the court shall determine the extent to which a forfeiture under this act affects the vested status of the member or retirant under the terms of the retirement system. An order under this section must contain all of the following, as applicable:

(a) The portion of the member's or retirant's retirement benefit under a retirement system established by that individual's employer at the time the act or acts that resulted in the felony were committed that accrued to the member or retirant on or after the date the first act that resulted in the felony was committed is forfeited.

(b) The member's or retirant's accumulated contributions standing to that individual's credit in the individual account established for that purpose in the retirement system must be refunded to the member or retirant.

(c) Except for a retirement benefit that is a benefit from employer contributions to a defined contribution plan forfeited under subdivision (a), the retirement system shall pay to an individual, if any, who would otherwise be a beneficiary of the member or retirant whose retirement benefit is being forfeited under this act an actuarially equivalent monthly retirement allowance at the age the member or retirant would have become eligible for unreduced retirement benefits under that retirement system.

(d) The retirement system shall provide hospitalization and medical coverage insurance to the member or retirant whose retirement benefit is being forfeited under this act and to his or her beneficiaries in the same manner and under the same restrictions as is provided to other retirants and beneficiaries of that retirement system.

(2) If a court enters an order described in subsection (1), the clerk of the court shall deliver the order to the retirement system.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

**38.2704a Freezing of retirement benefit; court order; delivery to retirement system; "prosecuting agency" defined.**

Sec. 4a.

(1) A retirement benefit subject to forfeiture under this act may be frozen pursuant to a freezing order issued by

the court on a showing of probable cause that the retirement benefit is subject to forfeiture.

(2) On an ex parte application by the prosecuting agency, the court may determine ex parte whether there is probable cause to believe that a member's or retirant's retirement benefit is subject to forfeiture under this act and that notice to the member or retirant before a freezing of the retirement benefit would cause the loss of the retirement benefit subject to forfeiture under this act. If the court finds that there is probable cause to believe that the retirement benefit is subject to forfeiture and to believe that prior notice would cause loss of the retirement benefit, the court shall issue a freezing order freezing the retirement benefit.

(3) If a court enters a freezing order under this section, the clerk of the court shall deliver the freezing order to the retirement system.

(4) As used in this section, "prosecuting agency" means the attorney general of this state, or his or her designee, or the prosecuting attorney of a county, or his or her designee.

**History:** Add. 2017, Act 43, Eff. Sept. 5, 2017

### 38.2705 Retirement system; compliance with court order.

Sec. 5.

(1) The retirement system shall comply with an order of the court described in section 4 or 4a. The retirement system shall not pay to a member or retirant whose retirement benefit is forfeited or frozen under this act any retirement benefits on or after the day the governing body of the retirement system receives the order of the court under section 4 or 4a.

(2) A retirement system shall comply with any subsequent orders of a court based on an appeal of an order previously submitted to the retirement system under this act.

(3) A retirement system that complies with a court order under this act is released and discharged from any liability pertaining to retirement benefits arising on account of the former member's or retirant's service to the employer on receipt of the order of the court under section 4.

**History:** 1994, Act 350, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 467, Imd. Eff. Dec. 26, 1996 ;-- Am. 2017, Act 43, Eff. Sept. 5, 2017

## EXECUTIVE REORGANIZATION ORDER

## E.R.O. No. 1999-5

### 38.2721 Transfer of authority and duties relative to the deferred compensation plans and defined contribution plan from the state treasurer to the director of the department of management and budget by Type II transfer.

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Act 306 of the Public Acts of 1976, as amended, being MCL 38.1151, provides that the State Treasurer is responsible for the administration and investment of the deferred compensation plan, which consists of (1) the state of Michigan Deferred Compensation Plan I under Section 457 of the Internal Revenue Code and (2) the Michigan State Employees Deferred Compensation Plan II under Section 401(k) of the Internal Revenue Code (collectively, the "Deferred Compensation Plans"); and

WHEREAS, Act 234 of the Public Acts of 1992, as amended, being MCL 38.2101 et seq., Act 240 of the Public Acts of 1943, as amended, being MCL 38.1 et seq., and Act 261 of the Public Acts of 1957, as amended, being

MCL 38.1001 et seq., provide that the State Treasurer is responsible for administering, investing the assets of, and determining the provisions and procedures of Tier 2 (the "Defined Contribution Plan") for the Judges Retirement System, State Employees Retirement System, and the Legislative Retirement System, respectively; and

WHEREAS, the state of Michigan has entered into a contract with a third party administrator to provide administration, customer education, enrollment, investment, and recordkeeping services for the Deferred Compensation Plans and the Defined Contribution Plan; and

WHEREAS, the Department of Management and Budget administers various retirement systems and employee benefits programs for state employees and retirees; and

WHEREAS, the Deferred Compensation Plans and the Defined Contribution Plan, and any contracts for the provision of services related to the Deferred Compensation Plans and the Defined Contribution Plan, may be more effectively and efficiently administered and coordinated within the Department of Management and Budget; and

WHEREAS, it is most beneficial to the participants of the Deferred Compensation Plans and the Defined Contribution Plan if the State Treasurer, who is the investment fiduciary for the four state sponsored retirement plans and is also responsible for the investment functions for various other state operating and trust funds, continues to utilize his investment expertise in overseeing the investment options provided in the Deferred Compensation Plans and the Defined Contribution Plan;

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

1. Except as provided in Paragraph 3, all the authority, powers, duties, functions, and responsibilities relative to the Deferred Compensation Plans set forth in Act No. 306 of the Public Acts of 1976, as amended, being MCL 38.1151, are hereby transferred from the State Treasurer to the Director of the Department of Management and Budget by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. Except as provided in Paragraph 3, all the authority, powers, duties, functions, and responsibilities relative to the Defined Contribution Plan set forth in Act 234 of the Public Acts of 1992, as amended, being MCL 38.2101 et seq., Act 240 of the Public Acts of 1943, as amended, being MCL 38.1 et seq., and Act 261 of the Public Acts of 1957, as amended, being MCL 38.1001 et seq., are hereby transferred to the Director of the Department of Management and Budget by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being MCL 16.103.

3. The State Treasurer, with the advice of the Department of Management and Budget, shall continue to be responsible for approving the various investment offerings provided to the participants of the Deferred Compensation Plans and the Defined Contribution Plan and for establishing investment guidelines for the stable value fund options and mutual fund options in the Deferred Compensation Plans and the Defined Contribution Plan.

4. All records, personnel, property, and unexpended balances of appropriations, allocations and other used, held, employed, available to or to be made available to the Department of Treasury for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Department of Management and Budget.

5. All rules, orders, contracts, investment contracts, investment guidelines, and other agreements relating to the Deferred Compensation Plans and the Defined Contribution Plan lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

6. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system.

7. The Director of the Department of Management and Budget in cooperation with the State Treasurer shall provide executive direction and supervision for the implementation of the transfer. The Director of the Department of Management and Budget shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities described by this Order.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

9. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall become effective October 1, 1999.

**History:** 1999, E.R.O. No. 1999-5, Eff. Oct. 1, 1999

## PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT

## Act 77 of 2010

AN ACT to authorize and create irrevocable trusts and individual accounts within the trusts for the purpose of holding, investing, and distributing assets to be used for certain postemployment health care benefits and reimbursement of medical expenses; to set forth certain rights that public employees have in retirement health care benefits and reimbursement of medical expenses under certain circumstances; to provide for the establishment and amendment of certain irrevocable trust agreements; and to prescribe certain powers and duties of certain retirement systems, state departments, public officials, and public employees.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

*The People of the State of Michigan enact:*

### 38.2731 Short title; meanings of words and phrases.

Sec. 1.

(1) This act shall be known and may be cited as the "public employee retirement health care funding act".
(2) For purposes of this act, the words and phrases defined in sections 2 to 2b have the meanings ascribed to them in those sections.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2732 Definitions; D to H.

Sec. 2.

(1) "Department" means the department of technology, management, and budget.
(2) "Employer contributions" means the amount transferred by an employer to a funding account or a health reimbursement account.
(3) "Funding account" means an account created pursuant to section 3(6) for the deposit of funds and payment of retirement health care benefits under the applicable retirement act.
(4) "Funding account dependent" means 1 or more of the following:
(a) A dependent as that term is used in section 20d of the state employees' retirement act, 1943 PA 240, MCL 38.20d, or a "health benefit dependent" as that term is defined in section 54 of the state employees' retirement act, 1943 PA 240, MCL 38.54, whichever is applicable.
(b) A health insurance dependent as that term is defined in section 91 of the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1391.
(c) A retirement allowance beneficiary as that term is defined in section 109 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2109, or a health benefit dependent as that term is defined in section 705 of the judges retirement act of 1992, 1992 PA 234, MCL 38.2655, whichever is applicable.
(d) A survivor as that term is defined in section 13a of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1013a, a beneficiary of a deceased retirant as that term is used in section 50b of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1050b, or a health benefit dependent as that term is defined in section 65 of the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1065, whichever is applicable.
(e) A retirement allowance beneficiary as that term is defined in section 4 of the state police retirement act of 1986, 1986 PA 182, MCL 38.1604, or a dependent as that term is used in section 42 of the state police retirement act of 1986, 1986 PA 182, MCL 38.1642, whichever is applicable.

(5) "Health reimbursement account" means an employer-sponsored individual account established within the irrevocable trust and administered by the trustees into which a member and his or her employer contribute money to be used for the reimbursement of medical expenses.
(6) "Health reimbursement account dependent" means a past member's legal spouse and the past member's

unmarried children who are considered dependent under section 152 of the internal revenue code, 26 USC 152, determined without regard to the special exclusion under section 152(b)(1) of the internal revenue code, 26 USC 152, or the earnings limit under section 152(d)(1)(B) of the internal revenue code, 26 USC 152.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2732a Definitions; M to P.

Sec. 2a.

(1) "Mandatory contributions" means mandatory amounts contributed by a participating member, which amounts, to the extent permitted by applicable law, are treated as a salary increase that has been foregone by the participating member or a permanent reduction in a participating member's compensation, with such amounts being contributed by the employer to each participating member's health reimbursement account. Mandatory contributions include other amounts established by the employer that may be treated as picked up by the employer to the fullest extent permitted by the internal revenue code, but do not include any contributions made only by the employer without an impact on the salary of the participating member.

(2) "Medical expense" means an expense incurred at the time a past member or his or her health reimbursement account dependent is furnished the medical care or service. To be considered a medical expense under this act, the expense shall meet all of the following conditions:

(a) Is a medical expense that would otherwise qualify for a deduction under section 213(d) of the internal revenue code, 26 USC 213, irrespective of the income threshold set forth in section 213(a) of the internal revenue code, 26 USC 213.

(b) Has not been and will not be reimbursed by any other source.

(c) Was incurred by a past member or his or her health reimbursement account dependent after the past member became entitled to receive reimbursements for medical expenses under this act.

(d) Is properly and timely substantiated by the individual claiming the expense in a manner established by the department.

(3) "Member" means a person who is a member, former member, deferred member, qualified participant, or former qualified participant as determined under the applicable retirement act.

(4) "Participating member" means a member who is required to make mandatory contributions by the applicable retirement act to his or her health reimbursement account.

(5) "Past member" means a former member who has retired with retirement health care benefits payable by a retirement system or a former qualified participant who has terminated employment and has an amount within his or her health reimbursement account.

**History:** Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2732b Definitions; R to V.

Sec. 2b.

(1) "Retirement act" means 1 or more of the following:

(a) The state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(b) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(c) The judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(d) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(e) The Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

(2) "Retirement health care benefits" means expenses for medical, dental, and vision to be paid for past members or their funding account dependents under the applicable retirement act.

(3) "Retirement system" means a retirement system established under a retirement act.

(4) "Trust" means an irrevocable trust created under section 3(1).

(5) "Trustee" means a member of a retirement system board.

(6) "Voluntary contributions" means voluntary amounts contributed by a member or participating member into a health reimbursement account. However, to the extent required by applicable law, voluntary amounts shall not be contributed through a salary reduction election under a cafeteria plan pursuant to section 125 of the internal revenue code, 26 USC 125.

**History:** Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011

**38.2733 Irrevocable trust; authorization; creation; establishment; governing board of each retirement system as grantor; members of retirement system board as trustees; deposits; distributions; funding account; preparation of annual financial statements; establishment and maintenance of health reimbursement accounts; separate prefunding account.**

Sec. 3.

(1) One irrevocable trust is authorized and created by this act for each retirement system. An irrevocable trust established under this subsection shall at all times be established and administered in accordance with section 115 of the internal revenue code, 26 USC 115.

(2) The governing board of each retirement system shall be the grantor and shall administer the irrevocable trust created for that retirement system in order to pay retirement health care benefits to its past members and their funding account dependents and reimburse medical expenses to its past members and their health reimbursement account dependents. The members of the retirement system board shall act as the trustees of the irrevocable trust for that retirement system. The trustees shall adopt a written trust agreement that meets all of the requirements set forth in section 9. The trustees of the irrevocable trust may establish and adopt policies and procedures for administering the irrevocable trust.

(3) Each trust shall be managed and operated separately and independent of the other retirement system trusts. The trustees may contract with public and private entities for the provision of bookkeeping, benefit payments, and other plan functions. The department, the department of treasury, and the department of the attorney general shall provide services to the trust as requested by the trustees.

(4) Except as otherwise provided in this subsection, the assets in the irrevocable trusts shall be invested in accord with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m. Except as otherwise provided in this subsection, the state treasurer shall be the investment fiduciary of the irrevocable trusts and shall have exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper investment of the assets in the irrevocable trusts. The board of trustees of the Michigan legislative retirement system created under the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, may elect, or revoke an election, to be the investment fiduciary of the funding account assets within its irrevocable trust and retain the exclusive authority to employ or contract with personnel and for services that are necessary for the proper investment of those assets. This subsection does not apply to assets contributed or credited to a health reimbursement account.

(5) Each trust shall receive state appropriations, employer contributions, mandatory contributions, voluntary contributions, investment earnings, refunds and reimbursements, and other permitted deposits, and shall make distributions for the payment of retirement health care benefits and reimbursement of medical expenses authorized by the trustees for the administration of such trust. However, an amount in excess of twice the annual current obligations of the trust shall not be deposited in or received by the trust unless the state treasurer certifies that the proposed deposit will not materially reduce the amount of federal funds received by this state to support payments made under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b. The trustees are authorized to establish an administrative and investment fee structure to be charged against the funding account and the health reimbursement accounts within the trust to defray the costs of administering the trust. An irrevocable trust established under this section shall be kept separate from the pension assets of retirement systems.

(6) A funding account shall be established by the trustees for the funding and prefunding of payments of retirement health care benefit obligations under the applicable retirement act, and the trustees may create accounts that the trustees determine are necessary for the administration of the trust. For each retirement system, past members shall have contractual rights only in the aggregate to the payment of retirement health care benefits provided by the applicable retirement act to the extent assets exist in the funding account for that retirement system. This act shall not be construed to define or otherwise assure, deny, diminish, increase, or grant any right or privilege to retirement health care benefits or other postemployment benefits to any person or to assure, deny, diminish, increase, or grant retirement health care benefits or other postemployment benefits, rights, and privileges previously or already granted to members or past members and their dependents by the applicable retirement act.

(7) The governing board of a retirement system may from time to time authorize the deposit into the funding account of any eligible funds on deposit in an account within its retirement system for the purpose of payment of eligible retirement health care benefits. Distributions from the funding account may be made to satisfy the requirements of the retirement system for all retirement health care benefits provided by the retirement system.

(8) The trustees shall cause the annual financial statements of the trust to be prepared in accordance with generally accepted accounting principles and an audit to be conducted of those financial statements by a qualified independent certified accounting firm for each fiscal year in accordance with generally accepted auditing standards.

(9) Health reimbursement accounts shall be established and maintained within each irrevocable trust to receive and hold the amounts contributed under section 10. All health reimbursement accounts shall be established in a manner that complies with all applicable statutory provisions, regulatory provisions, and internal revenue service rulings governing health reimbursement arrangements, including, but not limited to, section 105(b) of the internal revenue code, 26 USC 105, internal revenue notice 2002-45, and internal revenue rulings 2005-24 and 2006-36.

(10) A separate prefunding account may be established by the trustees for the prefunding of amounts to be contributed or credited by this state to health reimbursement accounts under the applicable retirement act. A past member has no rights to the funds in the separate prefunding account established under this subsection before amounts are contributed or credited to the past member's health reimbursement account under the applicable retirement act.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2734 Assets as irrevocable.

Sec. 4.

(1) Except as otherwise provided in this section and sections 8 and 17, assets contributed to the irrevocable trust are irrevocable and may not be refused, refunded, or returned to the employer or employee making the contribution.

(2) To the extent permitted under state and federal law, voluntary contributions to a health reimbursement account and any investment income on those amounts may be distributed to a deceased member's or past member's beneficiaries or estate if those amounts exist in the deceased member's or past member's health reimbursement account and all eligible medical expenses have been reimbursed for the deceased member or past member and for all of his or her health reimbursement account dependents.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2735 Assets; use; limitation.

Sec. 5.

The assets of the irrevocable trust are to be used solely to perform this essential function of state government. The trust shall only provide retirement health care benefits as provided under this act and pay fees and expenses for the administrative costs in carrying out this essential governmental function.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

### 38.2736 Assets not subject to certain processes of law.

Sec. 6.

The assets of the irrevocable trust and the ability of a member or past member of a retirement system to receive retirement health care benefits shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

### 38.2737 Assets; diversion for other purposes prohibited.

Sec. 7.

The assets of the irrevocable trust shall be used exclusively for the benefit of past members and their funding account dependents and shall not be diverted for a purpose other than the payment of retirement health care benefits and the administrative costs of providing such benefits.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

### 38.2738 Remaining trust assets; dissolution; distribution; remaining health reimbursement account assets.

Sec. 8.

(1) Any assets remaining in the funding account after all payments for eligible retirement health care benefits have been paid and all other liabilities of the trust have been satisfied shall be distributed to this state or other employers within the applicable retirement system so long as the employers are organizations the income of which is excluded under section 115(1) of the internal revenue code, 26 USC 115.

(2) Upon dissolution of the irrevocable trust, any assets remaining after the payment of debts and the satisfaction of liabilities are to be distributed to 1 or more states, political subdivisions of states, the District of Columbia, or other organizations the income of which is excluded under section 115(1) of the internal revenue code, 26 USC 115.

(3) Except as otherwise provided in section 4(2), any assets remaining in a health reimbursement account after all reimbursements for medical expenses for the past member and any health reimbursement account dependents of the past member have been paid shall be distributed to the funding account within the irrevocable trust.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2739 Written trust agreement; contents.

Sec. 9.

The written trust agreement for each retirement system shall contain all of the following provisions consistent with this act:

(a) Recitals describing the creation and purpose of the trust.

(b) Language reflecting the requirements of sections 4 through 7.

(c) Sections outlining the management and operation of the trust.

(d) A description of the various accounts that carry out the functions of the trust.

(e) Provisions setting forth the powers and duties of the trustees.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

**38.2740 Retirement health care benefits; prefunding; credit to funding account; contribution or credit to health reimbursement account.**

Sec. 10.

(1) This state, an employer of a member within a retirement system, a member, or any other person may contribute amounts to a funding account within an applicable trust for the prefunding of retirement health care benefits.

(2) If a funding account contribution is made to the applicable trust, the contribution shall promptly be credited to the funding account within the applicable trust.

(3) Trustees shall credit the applicable funding account with the appropriate investment earnings on those assets.

(4) A member shall contribute an amount to the funding account as required by the applicable retirement act.

(5) A participating member shall contribute an amount to his or her health reimbursement account as required by the applicable retirement act.

(6) The employer of a member or participating member shall contribute or credit to the member's or participating member's health reimbursement account an amount as required by the applicable retirement act.

(7) A member or participating member may make voluntary contributions to his or her health reimbursement account in a whole percentage ranging from 1% to 5% of the member's or participating member's compensation, subject to any limit provided under state or federal law. This subsection does not apply to members of a retirement system until the retirement system has determined that voluntary contributions are permitted by law and a procedure has been implemented for the contributions.

(8) The employer of a member or participating member may contribute or credit an amount to the member's or participating member's health reimbursement account as set forth in the applicable retirement act. This subsection does not apply to members of a retirement system until the applicable retirement system has determined that voluntary contributions are permitted by law and a procedure has been implemented for the contributions.

(9) When a participating member makes a mandatory contribution as a result of a provision of the applicable retirement act, the mandatory contribution, along with any other contributions under this section or a provision of the applicable retirement act, shall promptly be credited to that participating member's health reimbursement account.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

**38.2740a Health reimbursement account; vesting; rights.**

Sec. 10a.

(1) A member or participating member is 100% vested in mandatory contributions and voluntary contributions made to his or her health reimbursement account, subject to permissible use of the contributions under this act.

(2) A member or participating member is vested in employer contributions made to his or her health reimbursement account, subject to permissible use of the contributions under this act, according to the following schedule:

(a) Fifty percent vested after earning 2 years of service as determined by the applicable retirement act.

(b) Seventy-five percent vested after earning 3 years of service as determined by the applicable retirement act.

(c) One hundred percent vested after earning 4 years or more of service as determined by the applicable retirement act.

(3) A past member and his or her health reimbursement account dependents have the right to reimbursement of medical expenses under this act to the extent such funds exist in the past member's health reimbursement account.

**History:** Add. 2011, Act 265, Imd. Eff. Dec. 15, 2011

**38.2741 Written plan document; terms and conditions of payments of retirement health care benefits and reimbursements of medical expenses.**

Sec. 11.

(1) The trustees shall establish a separately written plan document that governs the terms and conditions of payments of retirement health care benefits and reimbursements of medical expenses consistent with the applicable retirement act.

(2) If the governing board of a retirement system has made a deposit described in section 3(7), the trust shall use the funds in the funding account to satisfy the requirements of the retirement system for all retirement health care benefits provided by the retirement system consistent with this act and the plan document established under this section.

(3) Any funds in the funding account may be counted toward and used in the calculation of the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared pursuant to section 3(8).

(4) Reimbursement of medical expenses from a health reimbursement account shall be in a manner that complies with all applicable statutory provisions, regulatory provisions, and internal revenue service rulings governing health reimbursement arrangements, including, but not limited to, section 105(b) of the internal revenue code, 26 USC 105, internal revenue notice 2002-45 and internal revenue rulings 2005-24 and 2006-36.

(5) Following termination of employment, the trust for the applicable retirement system shall reimburse medical expenses, as appropriate, from the past member's health reimbursement account at least quarterly, until the past member's health reimbursement account is exhausted.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

**38.2742 Severability.**

Sec. 12.

(1) If the department receives notification from the United States internal revenue service that this act or any portion of this act will cause any retirement system to be disqualified for tax purposes under the internal revenue code, or prevent any irrevocable trust from meeting the requirements of section 115 of the internal revenue code, 26 USC 115, then the portion that will cause the disqualification does not apply.

(2) The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this act.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

**38.2743 Trusts; validity.**

Sec. 13.

The trusts created by this act shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in this act and agreements creating the trusts, nor shall the trusts be deemed to be invalid as violating any existing law against perpetuities or against suspension of the power of alienation of title to property or against trusts for the purpose of the accumulation of income, but each trust may continue for the amount of time that may be necessary to accomplish the purpose for which it was created.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

### 38.2744 Taxation of assets and income; exemption.

Sec. 14.

All assets and income of the trusts shall be exempt from taxation by this state or any political subdivision of this state. Except as otherwise provided in section 4(2), distributions from the trusts shall not be treated as taxable income to the past members, their health reimbursement account dependents, or their funding account dependents by this state or any political subdivision of this state.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010 ;-- Am. 2011, Act 265, Imd. Eff. Dec. 15, 2011

### 38.2745 Trustee; exception from certain responsibilities; indemnification.

Sec. 15.

(1) A trustee shall not be any of the following:

(a) Personally liable for any liability, loss, or expense suffered by the trust, unless the liability, loss, or expense arises out of or results from the willful misconduct or intentional wrongdoing of the trustee.

(b) Responsible for the adequacy of the trust to meet and discharge any obligation under the applicable retirement act and this act.

(c) Required to take action to enforce the payment of any contribution or appropriation to the trust.

(2) The trustees may be indemnified by the trusts and from the fund of the trusts against costs, liabilities, losses, damages, and expenses, including their attorney fees, as more fully provided in the respective trust agreements, unless such costs, liabilities, losses, damages, or expenses arise out of or result from the willful misconduct or intentional wrongdoing of a trustee.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

### 38.2747 Correction of error by trustees.

Sec. 17.

If a change or error in any records of the trust results in a member, past member, or his or her dependent paying into or receiving from the trust more or less than the member, past member, or his or her dependent should have paid or would have been entitled to receive had the records been correct, the trustees shall correct the error and, as far as practicable, shall incrementally adjust future payments to correct for the change or error.

**History:** 2010, Act 77, Imd. Eff. May 19, 2010

## PROTECTING LOCAL GOVERNMENT RETIREMENT AND BENEFITS ACT

### Act 202 of 2017

AN ACT to create the protecting local government retirement and benefits act; to provide the powers and duties of certain state and local agencies and officials; and to create a municipal stability board.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

*The People of the State of Michigan enact:*

### 38.2801 Short title.

Sec. 1.

This act shall be known and may be cited as the "protecting local government retirement and benefits act".

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2802 Legislature findings and declarations.

Sec. 2.

The legislature finds and declares that this act is intended to reflect the July 2017 Report of Findings and Recommendations for Action of the Responsible Retirement Reform for Local Government Task Force.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2803 Definitions.

Sec. 3.

As used in this act:

(a) "Annual report" means the most recent audited financial statement reporting a local unit of government's liability for retirement pension benefits and retirement health benefits as determined under applicable government accounting standards of the Governmental Accounting Standards Board.

(b) "Annual required contribution" means the sum of the normal cost payment and the annual amortization payment for past service costs to fund the unfunded actuarial accrued liability.

(c) "Corrective action plan" means a plan that details the actions to be taken by a local unit of government to address and resolve the underfunded status of the local unit of government.

(d) "Employee" means an individual holding a position by election, appointment, or employment in a local unit of government.

(e) "Evaluation system" means the local government retirement and benefits fiscal impact evaluation system created under section 5 to provide for the identification of, and a corrective action plan to resolve, the underfunded status of a local unit of government under this act.

(f) "Former employee" means an individual who was an employee who terminated employment with the applicable local unit of government.

(g) "General fund operating revenues" means the sum of all governmental activity fund revenues of a local unit of government as determined by the state treasurer based on applicable government accounting standards of the Governmental Accounting Standards Board. General fund operating revenues do not include any fund of the local unit of government that the state treasurer determines based on applicable government accounting standards of the Governmental Accounting Standards Board is a proprietary, fiduciary, enterprise, or other restricted fund that may not be expended to provide retirement health benefits or retirement pension benefits.

(h) "Local unit of government" means any of the following:

(i) A city.

(ii) A village.

(iii) A township.

(iv) A county.

(v) A county road commission.

(vi) An authority created under chapter VIA of the aeronautics code of the state of Michigan, 1945 PA 327,

MCL 259.108 to 259.125c.

(vii) A metropolitan government or authority established under section 27 of article VII of the state constitution of 1963.

(viii) A metropolitan district created under the metropolitan district act, 1929 PA 312, MCL 119.1 to 119.18.

(ix) An authority created under 1939 PA 147, MCL 119.51 to 119.62.

(x) A municipal electric utility system as that term is defined in section 4 of the Michigan energy employment act of 1976, 1976 PA 448, MCL 460.804.

(xi) A district, authority, commission, public body, or public body corporate created by 1 or more of the entities described in subparagraphs (i) to (x).

(i) "Local unit of government" does not include this state, a principal department of state government, a state institution of higher education under section 4, 5, or 6 of article VIII of the state constitution of 1963, a state agency, a state authority, or a reporting unit under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.

(j) "Municipal stability board" or "board" means the municipal stability board created in section 7.

(k) "Normal cost" means the annual service cost of retirement health benefits as they are earned during active employment of employees of the local unit of government in the applicable fiscal year, using an individual entry-age normal and level percent of pay actuarial cost method.

(l) "Retirant" means an individual who has retired with a retirement benefit payable from a retirement system of a local unit of government.

(m) "Retirement benefit" includes a retirement health benefit or retirement pension benefit, or both.

(n) "Retirement health benefit" means an annuity, allowance, payment, or contribution to, for, or on behalf of a former employee or a dependent of a former employee to pay for any of the following components:

(i) Expenses related to medical, drugs, dental, hearing, or vision care.

(ii) Premiums for insurance covering medical, drugs, dental, hearing, or vision care.

(iii) Expenses or premiums for life, disability, long-term care, or similar welfare benefits for a former employee.

(o) "Retirement pension benefit" means an allowance, right, accrued right, or other pension benefit payable under a defined benefit pension plan to a participant in the plan or a beneficiary of the participant.

(p) "Retirement system" means a retirement system, trust, plan, or reserve fund that a local unit of government establishes, maintains, or participates in and that, by its express terms or as a result of surrounding circumstances, provides retirement pension benefits or retirement health benefits, or both. Retirement system does not include a state unit as that term is defined in section 2 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1682.

(q) "Underfunded local unit of government" means a local unit of government that is in underfunded status.

(r) "Underfunded status" means that the state treasurer has determined that the local unit of government is underfunded under the review provided in section 5 and the local unit of government does not have a waiver under section 6.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

**38.2804 Retirement health benefit offered by local unit of government; requirements; "summary retiree health care report" defined.**

Sec. 4.

(1) Beginning July 1, 2018, if a local unit of government offers or provides an employee of the local unit of government, or a former employee first employed by the local unit of government before the effective date of this act, with a retirement health benefit, all of the following apply to the local unit of government:

(a) The local unit of government must pay at least both of the following:

(i) Normal costs for employees first hired after June 30, 2018.

(ii) Any retiree premiums that are due for retirants in the retirement system.

(b) The local unit of government shall electronically submit a summary retiree health care report in a form prescribed by the department of treasury on an annual basis to the governing body of the local unit of government and the department of treasury no later than 6 months after the end of the local unit of government's fiscal year. The department of treasury shall post on its website an executive summary of each summary retiree health care report submitted to the department of treasury under this subdivision. The executive summary must include the applicable system's unfunded actuarial accrued liability. The department of treasury shall submit each executive summary required under this subdivision to the senate and the house of representatives appropriations committees and the

senate and house fiscal agencies not less than 30 days after posting.

(c) At least every 5 years, the local unit of government shall have an actuarial experience study conducted by the plan actuary for each retirement system of the local unit of government.

(d) At least every 8 years, the local unit of government shall do at least 1 of the following:

(i) Have a peer actuarial audit conducted by an actuary that is not the plan actuary.

(ii) Replace the plan actuary.

(e) A local unit of government that is eligible to use a specified alternative measurement method under Governmental Accounting Standards Board standards is exempt from the requirements under subdivisions (c) and (d).

(2) As used in this section, "summary retiree health care report" means a report that includes all of the following for each retirement system of the local unit of government that provides retirement health benefits:

(a) The name of the retirement system.

(b) The names of the retirement system's investment fiduciaries.

(c) The names of the retirement system's service providers.

(d) The retirement system's assets and liabilities and changes in net plan assets on a plan-year basis.

(e) The retirement system's funded ratio based on the ratio of valuation assets to actuarial accrued liabilities on a plan-year basis.

(f) The assumed rate of return of the retirement system.

(g) The actual rate of return of the retirement system for the previous 1-year period, the previous 5-year period, and the previous 10-year period.

(h) The discount rate used by the retirement system.

(i) The retirement system's amortization method for unfunded liability, indicating whether it is open or closed.

(j) The retirement system's amortization method, indicating whether it is level percent or level dollar, and the assumed payroll growth rate.

(k) The retirement system's remaining amortization time period.

(l) The annual required contribution for the retirement system, indicating the normal cost and the amortization payment toward the unfunded actuarial accrued liability.

(m) The retirement system's health care inflation assumptions.

(n) The number of active employees and retirants in the retirement system.

(o) The amount of premiums paid on behalf of retirants in the retirement system.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

**38.2805 State treasurer; establishment of uniform actuarial assumptions of retirement systems; evaluation system; review and oversight of underfunded local unit of government; determination; calculation of funded ratios by local governmental unit; report; posting on website.**

Sec. 5.

(1) For purposes of reporting under this section, the state treasurer shall annually establish uniform actuarial assumptions of retirement systems that include, but are not limited to, investment returns, salary increase rates, mortality tables, discount rates, and health care inflation.

(2) The state treasurer shall create an evaluation system and provide for review and oversight under this act of an underfunded local unit of government beginning on the effective date of the determination by the state treasurer that the local unit of government is in underfunded status.

(3) Each year beginning after December 31, 2017, the state treasurer shall determine the underfunded status of each local unit of government.

(4) The state treasurer shall determine that a local unit of government is in underfunded status if any of the following apply:

(a) The actuarial accrued liability of a retirement health system of the local unit of government is less than 40% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement health systems of the local unit of government is greater than 12% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.

(b) The actuarial accrued liability of a retirement pension system of the local unit of government is less than 60% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement pension systems of the local unit of government

is greater than 10% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.

(c) The local unit of government has not submitted reports as required under this section.

(d) The local unit of government fails to make the payments as described under section 4(1).

(5) For purposes of the report under subsection (6), a local unit of government shall annually calculate the funded ratios of each retirement system of the local unit of government using the uniform actuarial assumptions established under subsection (1).

(6) A local unit of government shall electronically submit a report in a form prescribed by the department of treasury on an annual basis to the governing body of the local unit of government and the department of treasury no later than 6 months after the end of the local unit of government's fiscal year. The report under this subsection must include at least all of the following:

(a) The funded ratios of each retirement system of the local unit of government.

(b) Annual required contributions for each retirement system of the local unit of government.

(c) The local unit of government's annual general fund operating revenues, if any.

(7) The state treasurer shall post publicly on the department of treasury website all of the following:

(a) The uniform actuarial assumptions under subsection (1).

(b) A summary report of the local unit of government reports submitted under subsection (6).

(c) The underfunded status of local units of government as determined under subsection (3).

(d) The current waiver status of local units of government provided under section 6.

(e) Any corrective action plan approved under section 10.

(8) A local unit of government shall post publicly on its website, or in a public place if it does not have a website, the information as provided in subsection (7) that is applicable to that local unit of government.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2806 Underfunded status; waiver; duties of state treasurer if local unit of government not granted waiver.

Sec. 6.

(1) To apply for a waiver of the underfunded status determination under section 5, the local unit of government's administrative officer and governing body must approve a plan demonstrating the underfunded status is being addressed and must approve the waiver application. The state treasurer shall issue a waiver of the determination of underfunded status for a local unit of government if the state treasurer determines that the underfunded status is adequately being addressed by the local unit of government.

(2) For any underfunded local unit of government that is not granted a waiver, the department of treasury shall do all of the following:

(a) Undertake an individualized and comprehensive internal review of the local unit of government's retirement system.

(b) Discuss changes or reforms that have been made with the local unit of government's designated officials.

(c) Review actuarial projections, including trends and forecasts.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2807 Municipal stability board; creation; powers, duties, and functions; membership; appointment by governor; qualifications; terms; vacancy; chairperson; quorum; meetings; bylaws; contract for professional services; travel and expenses; ethics policy; oath of office; "professional services" defined.

Sec. 7.

(1) The municipal stability board is created within the department of treasury. Except as otherwise provided in this act, the board shall exercise its powers, duties, and functions independently of the state treasurer. The budgeting, procurement, and related management functions of the board must be performed under the direction and

supervision of the state treasurer. The department of treasury shall provide administrative support to the board.

(2) Subject to subsection (3), the board consists of all of the following members appointed by the governor:

(a) One resident of this state representing state officials.

(b) One resident of this state representing local officials.

(c) One resident of this state representing employees and retirees.

(3) Members appointed under subsection (2) must have knowledge, skill, or experience in accounting, actuarial science, retirement systems, retirement health benefits, or government finance.

(4) Of the members initially appointed by the governor under subsection (2), 1 member must be appointed for an initial term of 4 years, 1 member must be appointed for an initial term of 3 years, and 1 member must be appointed for an initial term of 2 years. After the initial terms, members appointed by the governor under subsection (2) must be appointed for terms of 4 years.

(5) A vacancy for an unexpired term must be filled in the same manner as the original appointment for the remainder of the term. After the expiration of a term, a member may continue to serve until a successor is appointed and qualified.

(6) The member of the board appointed under subsection (2)(a) shall serve as the chairperson of the board.

(7) A majority of the members of the board authorized to take an action constitute a quorum of the board for the transaction of business on that action. The board shall meet not less than quarterly and at the times and places within this state designated by the chairperson. An action of the board must be approved by a majority of the members authorized to take that action.

(8) The board shall adopt bylaws for governance of the board, which must, at a minimum, address the procedures for conducting meetings, including voting procedures, and the requirements of its members to attend meetings. Bylaws required by this section are not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(9) The board may contract for professional services, as it requires, and shall determine the qualifications for persons providing those professional services it considers necessary.

(10) Members of the board serve without compensation but may receive reimbursement for travel and expenses incurred in the discharge of official duties. The members of the board and contractors or agents of the board are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310.

(11) A member of the board, and any person the board contracts with, shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. The board shall adopt an ethics policy governing the conduct of board members and officers and employees of the board.

(12) Board members shall take and subscribe to the constitutional oath of office under section 1 of article XI of the state constitution of 1963. The oath must be filed with the secretary of state.

(13) As used in this section, "professional services" means services that require a high degree of intellectual skill, an advanced degree, or professional licensing or certification. Those providing the professional services must be distinguished based on their specialized knowledge, experience, and expertise. Professional services include, but are not limited to, accounting, actuarial, appraisal, auditing, investment advisor, and legal services.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2808 Development of corrective action plan; list of best practices and strategies.

Sec. 8.

The board shall review and annually update a list of best practices and strategies that will assist an underfunded local unit of government in developing a corrective action plan.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

### 38.2809 Corrective action plan; development and submission for approval.

Sec. 9.

An underfunded local unit of government shall develop and submit for approval a corrective action plan for the local unit of government. The local unit of government shall determine the components of the corrective action plan.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

**38.2810 Corrective action plan; review and approval by board; inclusion of corrective options and additional solutions; disapproval; notification and report; implementation of plan; monitor and certification of compliance; contents of plan.**

Sec. 10.

(1) The board shall review and vote on the approval of a corrective action plan submitted by a local unit of government. A local unit of government that is in underfunded status shall submit a corrective action plan to the board within 180 days after the determination of underfunded status. The board may extend the 180-day deadline by up to an additional 45 days if the local unit of government submits a reasonable draft of a corrective action plan and requests an extension. The governing body of the local unit of government shall approve the corrective action plan before submission to the board. The board shall approve or reject a corrective action plan within 45 days after it is submitted.

(2) A corrective action plan may include the corrective options for correcting underfunded status as set forth in subsection (7) and any additional solutions to address underfunded status. A local unit of government may also include in its corrective action plan a review of the local unit of government's budget and finances to determine any alternative methods available to address its underfunded status.

(3) The board may review the inclusion of the corrective options and additional solutions as described in subsection (7) as part of its approval criteria to determine whether a corrective action plan is designed to remove the local unit of government from underfunded status.

(4) If the board votes to disapprove a corrective action plan that has been submitted, the board shall within 15 days provide a notification and report to the local unit of government detailing the reasons for the disapproval of the corrective action plan. The local unit of government has 60 days from the date of the notification to address the reasons for disapproval and resubmit a corrective action plan for approval.

(5) The local unit of government has up to 180 days after the approval of a corrective action plan to begin to implement the corrective action plan to address its underfunded status.

(6) The board shall monitor each underfunded local unit of government's compliance with this act and any corrective action plan. The board shall adopt a schedule, not less than every 2 years, to certify that the underfunded local unit of government is in substantial compliance with this act. If the board determines that an underfunded local unit of government is not in substantial compliance under this subsection, the board shall within 15 days provide notification and report to the local unit of government detailing the reasons for the determination of noncompliance with the corrective action plan. The local unit of government has 60 days from the date of the notification to address the determination of noncompliance.

(7) A corrective action plan under this section may include the development and implementation of corrective options for the local unit of government to address its underfunded status. The corrective options as described in this section may include, but are not limited to, any of the following:

(a) For retirement pension benefits, any of the following:

(i) Closing the current defined benefit plan.

(ii) Implementing a multiplier limit.

(iii) Reducing or eliminating new accrued benefits.

(iv) Implementing final average compensation standards.

(b) For retirement health benefits, any of the following:

(i) Requiring cost sharing of premiums and sufficient copays.

(ii) Capping employer costs.

(8) Except as otherwise provided in this act, while any corrective action plan is in effect for an underfunded local unit of government, the local unit of government is not required to submit any additional corrective action plan for approval.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017

**38.2812 Board as state board; members as state officers; presumption of validity; court jurisdiction; department of treasury as party.**

Sec. 12.

(1) The board is a state board and its members are state officers for the purposes of section 6419 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6419.

(2) The validity of the board is conclusively presumed unless questioned in an original action filed in the court of claims within 60 days after the effective date of this act. The court of claims has original jurisdiction to hear an action under this subsection. The court shall hear the action in an expedited manner. The department of treasury is a necessary party in an action under this subsection.

(3) The court of claims has exclusive jurisdiction over any action challenging the validity of this act or an action or inaction under this act. The department of treasury is a necessary party in an action under this subsection.

**History:** 2017, Act 202, Imd. Eff. Dec. 20, 2017