

Act No. 177
Public Acts of 1995
Approved by the Governor
October 17, 1995
Filed with the Secretary of State
October 17, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Senator Steil

ENROLLED SENATE BILL No. 552

AN ACT to amend sections 4 and 108 of Act No. 300 of the Public Acts of 1980, entitled "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 within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of management and budget; to prescribe penalties; and to repeal certain acts and parts of acts," section 4 as amended by Act No. 193 of the Public Acts of 1989 and section 108 as added by Act No. 107 of the Public Acts of 1991, being sections 38.1304 and 38.1408 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 4 and 108 of Act No. 300 of the Public Acts of 1980, section 4 as amended by Act No. 193 of the Public Acts of 1989 and section 108 as added by Act No. 107 of the Public Acts of 1991, being sections 38.1304 and 38.1408 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 4. (1) "Compensation" means the remuneration earned by a member for service performed as a public school employee. If part of a member's remuneration is not paid in money, the retirement board shall fix the value of that part of the remuneration not paid in money. Compensation includes, 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. Compensation includes all amounts deducted from the pay of a public school employee, including amounts deducted pursuant to the member investment plan. Compensation includes longevity pay, overtime pay, vacation pay, and holiday pay while absent from work, sick leave pay while absent from work, and items of deferred compensation, exclusive of employer contributions to the retirement system. Compensation does not include terminal payments for unused sick leave, annual leave, bonus payments, hospitalization insurance and life insurance premiums, other fringe benefits paid by and from the funds of employers of public school employees, and

remuneration paid for the specific purpose of increasing the final average compensation. Compensation for the period on which final average compensation is based, for the purpose of computing final average compensation, does not include an amount over the compensation for the preceding year except increases provided by the normal salary schedule for the reporting unit. 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.

(2) "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.

(3) "Contributory service" means credited service other than noncontributory service.

(4) "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.

(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 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) Except as otherwise provided in this subsection, "eligible retirement plan" means an individual retirement account described in section 408(a) of the internal revenue code, an individual retirement annuity described in section 408(b) of the internal revenue code, an annuity plan described in section 403(a) of the internal revenue code, or a qualified trust described in section 401(a) of the internal revenue code, 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.

(9) "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, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(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) 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 and service rendered 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) 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; otherwise, the averaging period shall be 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) "Member investment plan" means the program of member contributions described in section 43a.

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 and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) Except as otherwise provided in this section, employer-financed benefits provided by the retirement system under this act shall not exceed \$10,000.00 per year for a retirant who has 15 or more years of credited service at retirement.

(3) Employer-financed benefits provided by the retirement system under this act shall not exceed the limitation under subsection (2) unless application of this subsection results in a higher limitation. The higher limitation of this subsection applies to employer-financed benefits provided by the retirement system and, for purposes of section 415(b) of the internal revenue code, applies to aggregated benefits received from all qualified pension plans administered by the department of management and budget, bureau of retirement systems. Employer-financed benefits provided by the retirement system shall not exceed the lesser of the following:

(a) One of the following amounts that is applicable to the member:

(i) If a member retires at age 62 or older, \$90,000.00 or the adjusted amount described in subsection (4) per year.

(ii) If a member retires at or after age 55 but before age 62, the actuarially reduced amount of the limitation prescribed in subparagraph (i) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph. However, the limitation in this subparagraph shall not be actuarially reduced below \$75,000.00.

(iii) If a member retires before age 55, the actuarially reduced amount of the limitation prescribed in subparagraph (ii) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph.

(b) 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code.

(4) Section 415(d) of the internal revenue code requires the secretary of the treasury or his or her delegate to annually adjust the \$10,000.00 limitation described in subsection (2) and the \$90,000.00 limitation described in subsection (3)(a)(i) for increases in cost of living, beginning in 1988. This section shall be administered using the limitations applicable to each calendar year as adjusted by the secretary of the treasury or his or her delegate under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.

(5) 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.

(6) 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.

(7) 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.

(8) 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 and the related internal revenue service regulations applicable to governmental plans.

(9) 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.

(10) For purposes of determining actuarial equivalent retirement allowances under sections 45 and 85(1)(b), (1)(c), and (2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

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

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.

