

Act No. 185  
Public Acts of 2010  
Approved by the Governor  
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**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2010**

Introduced by Senators Jansen, Gilbert and Kuipers

# **ENROLLED SENATE BILL No. 1226**

AN ACT to amend 1943 PA 240, entitled "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," by amending sections 38, 68, and 68c (MCL 38.38, 38.68, and 38.68c), section 38 as amended by 2007 PA 16, section 68 as added by 1996 PA 487, and section 68c as amended by 2010 PA 54, and by adding sections 19j, 20i, 35, and 68d.

*The People of the State of Michigan enact:*

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.

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.

Sec. 35. (1) Except as otherwise provided in this section, beginning with the first pay date after November 1, 2010 and ending September 30, 2013, 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.

(2) As used in this act, "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.

(3) The department of technology, management, and budget shall ensure, to the maximum extent possible, that payments made under this section shall be applied for any tax credits or tax liability reduction under the health care and education reconciliation act of 2010, Public Law 111-152.

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 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. 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. For the fiscal year that begins on October 1, 2006 only, the contribution for the unfunded actuarial accrued liability shall be equal to 4.5% of the unfunded actuarial accrued liability.

(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 compensation 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 management and budget the actual aggregate compensations paid to active members during the preceding state fiscal year. Upon receipt of that certification, the director of the department of 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 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, 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.

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 vested in 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 participant under Tier 1 for receiving health insurance coverage under section 20d, 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 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 vested in 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 vested in 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.

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 on or after October 2, 2007 agrees to forfeit his or her right to receive that retirement allowance during this period of state employment. The retirement system shall cease 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 employed by this state on October 1, 2007 so long as 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 or indirectly by this state through a contractual arrangement with other parties. Beginning after October 1, 2010, "employed by this state" shall also include engagement by the state as an independent contractor. This subsection does not apply to a retirant who is engaged as an independent contractor on October 1, 2010 so long as 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 shall 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, then the benefits under medicare shall 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 shall be coordinated as provided in 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 act 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 provided pursuant to 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 shall include the name of the retirant, the capacity in which the retirant is employed, and the total compensation paid to the retirant.

(4) Subsection (1) does not apply to the appointment of a retirant who was an assistant attorney general as a special assistant attorney general when the attorney general determines that, as a result of his or her previous employment with the 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.

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.

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.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved .....

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Governor