

No. 44
STATE OF MICHIGAN
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REGULAR SESSION OF 2010

Senate Chamber, Lansing, Friday, May 14, 2010.

12:10 a.m.

The Senate was called to order by the President pro tempore, Senator Randy Richardville.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Allen—present
Anderson—present
Barcia—present
Basham—excused
Birkholz—present
Bishop—present
Brater—present
Brown—present
Cassis—present
Cherry—present
Clark-Coleman—present
Clarke—present
Cropsey—present

Garcia—present
George—present
Gilbert—present
Gleason—present
Hardiman—present
Hunter—excused
Jacobs—present
Jansen—present
Jelinek—present
Kahn—present
Kuipers—present
McManus—present
Nofs—present

Olshove—present
Pappageorge—present
Patterson—excused
Prusi—present
Richardville—present
Sanborn—present
Scott—present
Stamas—present
Switalski—present
Thomas—present
Van Woerkom—present
Whitmer—present

Senator Tony Stamas of the 36th District offered the following invocation:

Lord, we pray this morning for Your wisdom. We pray that You will guide us as a State Senate and that You will guide the State House, the Governor, and the Lieutenant Governor. Help us to have the conviction to do what is right, the wisdom to hear Your voice, and the humility to have a servant's heart. We pray this in Your holy name. Amen.

The President pro tempore, Senator Richardville, led the members of the Senate in recital of the *Pledge of Allegiance*.

Motions and Communications

Senator Bishop entered the Senate Chamber.

Senator Cropsey moved that Senator George be temporarily excused from today's session.
The motion prevailed.

Senator Cropsey moved that Senator Patterson be excused from today's session.
The motion prevailed.

Senator Cropsey moved that, pursuant to rule 1.114, upon receipt of Senate bills returned from the House of Representatives, the Secretary of the Senate be directed to proceed with the enrollment printing and presentation of the bills to the Governor.

The motion prevailed.

Senator Thomas moved that Senator Barcia be temporarily excused from today's session.
The motion prevailed.

Senator Thomas moved that Senators Hunter and Basham be excused from today's session.
The motion prevailed.

The Secretary announced that the following House bills were received in the Senate and filed on Thursday, May 13:
House Bill Nos. 4580 6008 6009 6010

By unanimous consent the Senate proceeded to the order of

General Orders

Senator Cropsey moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President pro tempore, Senator Richardville, designated Senator Cherry as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Richardville, having resumed the Chair, the Committee reported back to the Senate, favorably and with a substitute therefor, the following bill:

House Bill No. 4073, entitled

A bill to authorize and create irrevocable trusts for the purpose of holding, investing, and distributing assets to be used for certain postemployment health care benefits; to set forth certain rights that public employees have in retirement health care benefits 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.

Substitute (S-4).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

During the Committee of the Whole, Senators Barcia and George entered the Senate Chamber.

By unanimous consent the Senate returned to the order of
Conference Reports

Senator Gilbert submitted the following:

FIRST CONFERENCE REPORT

The Committee of Conference on the matters of difference between the two Houses concerning
Senate Bill No. 1227, entitled

A bill to amend 1980 PA 300, entitled "The public school employees retirement act of 1979," by amending sections 4, 6, 7, 8, 25, 26, 41, 42, 43a, 43b, 43c, 61, 81, 86, and 87 (MCL 38.1304, 38.1306, 38.1307, 38.1308, 38.1325, 38.1326, 38.1341, 38.1342, 38.1343a, 38.1343b, 38.1343c, 38.1361, 38.1381, 38.1386, and 38.1387), section 4 as amended by 2008 PA 354, sections 6 and 7 as amended by 1995 PA 272, sections 8, 25, and 26 as amended by 1997 PA 143, section 41 as amended by 2007 PA 15, section 42 as amended by 1996 PA 268, section 43a as amended by 2007 PA 111, sections 43b and 81 as amended by 1989 PA 194, section 43c as amended by 1998 PA 213, and section 61 as amended by 2006 PA 158, and by adding sections 41b, 43e, 43f, and 81c and article 7.

Recommends:

First: That the House recede from the Substitute of the House as passed by the House.

Second: That the Senate and House agree to the Substitute of the Senate as passed by the Senate, amended to read as follows:

A bill to amend 1980 PA 300, entitled "The public school employees retirement act of 1979," by amending sections 4, 25, 26, 41, 42, 43c, 61, 81, 86, 87, and 91 (MCL 38.1304, 38.1325, 38.1326, 38.1341, 38.1342, 38.1343c, 38.1361, 38.1381, 38.1386, 38.1387, and 38.1391), section 4 as amended by 2008 PA 354, sections 25 and 26 as amended by 1997 PA 143, section 41 as amended by 2007 PA 15, section 42 as amended by 1996 PA 268, section 43c as amended by 1998 PA 213, section 61 as amended by 2006 PA 158, section 81 as amended by 1989 PA 194, and section 91 as amended by 2007 PA 110, and by adding sections 41b, 43e, 81b, 81c, and 92a and article 7.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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.

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.**

Sec. 26. (1) **THIS SECTION DOES NOT APPLY TO TIER 2.**

(2) ~~(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 of the retirement system.

(3) ~~(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 funds shall be credited to the respective reserves under this act that earned the income.

Sec. 41. (1) The annual level percentage of payroll contribution rate to finance benefits being provided and to be provided by the retirement system shall be determined by actuarial valuation pursuant to subsection (2) upon 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 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. 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 benefits payable in the event of the death of a member before retirement or the disability of a member shall be computed using a terminal funding method of valuation. Except as otherwise provided in this subsection, the contribution rate for other benefits shall be computed using an individual projected benefit entry age normal cost method of valuation. Except as otherwise provided in this section, for the 1995-96 state fiscal year and for each subsequent fiscal year, the contribution rate for health benefits provided under section 91 shall be computed using a cash disbursement method. For each fiscal year after the 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 created under section 34(2), the contribution rate for health benefits provided under section 91 shall be computed using an individual projected benefit entry age normal cost method of valuation. The contribution rate for service likely to be rendered in the current year, the normal cost contribution rate, shall be equal to the aggregate amount of individual projected benefit entry age normal costs divided by 1% of the aggregate amount of active members' valuation compensation. Except as otherwise provided under this subsection, the contribution rate for unfunded service rendered before the valuation date, the unfunded actuarial accrued liability contribution rate, shall be the aggregate amount of unfunded actuarial accrued liabilities divided by 1% of the actuarial present value over a period not to exceed 50 years of projected valuation compensation, where unfunded actuarial accrued liabilities are 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. For the 2006-2007 state fiscal year, the contribution rate for unfunded service rendered before the valuation date shall be equal to 4.5% of the aggregate amount of unfunded actuarial accrued liabilities divided by 1% of the actuarial valuation annual compensation.~~

(3) Before November 1 of each 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 current 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 sum due and payable to the retirement system and shall certify this amount to the reporting units.

(5) The reporting units shall make payment of the amount certified under subsection (4) to the director of the department in 12 equal monthly installments.

(6) Not later than 90 days after termination 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. Upon receipt of that certification, the director of the department shall compute any adjustment required to the amount due to a difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate. The difference, if any, shall be paid as provided in subsection (9). This subsection does not apply in a fiscal year in which a deposit occurs pursuant to 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, chapter 531, 49 Stat. 620, 42 USC 401 to 405, 406 to 418, 420 to 423, 424a to 426-1, and 427 to 433.

(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 the difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6), if any, shall be paid by that employer in the next succeeding state fiscal year and a minimum of 25% of the remaining difference shall 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 the difference between the estimated and the actual aggregate compensation and the estimated and the actual actuarial employer contribution rate described in subsection (6), if any, shall be paid by that employer in the next succeeding state fiscal year and a minimum of 25% of the remaining difference shall 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 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 in a fiscal year in which a deposit occurs pursuant to subsection (14).

(10) Beginning on the designated date, all assets held by the retirement system shall be reassigned their fair market value, as determined by the state treasurer, as of the designated date, and in calculating any unfunded actuarial accrued liabilities, any market gains or losses incurred before the designated date shall not be considered by the retirement system's actuaries.

(11) ~~Beginning~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, BEGINNING** on the designated date, the actuary used by the retirement board shall assume a rate of return on investments of 8.00% per annum, as of the designated date, 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 7.00% PER ANNUM FOR INVESTMENTS ASSOCIATED WITH MEMBERS**

WHO FIRST BECAME MEMBERS ON AND AFTER JULY 1, 2010, WHICH RATE MAY ONLY BE CHANGED WITH THE APPROVAL OF THE RETIREMENT BOARD AND THE DIRECTOR OF THE DEPARTMENT.

(12) Beginning on the designated date, the value of assets used shall be based on a method that spreads over a 5-year period the difference between actual and expected return occurring in each year after the designated date and such methodology may only be changed with the approval of the retirement board and the director of the department.

(13) Beginning on the designated date, 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 upon 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 pursuant to 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 pursuant to 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, 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. 41B. (1) BEGINNING JULY 1, 2010, THE RETIREMENT SYSTEM MAY DETERMINE A SEPARATE EMPLOYER CONTRIBUTION RATE FOR MEMBERS WHO FIRST BECAME A MEMBER ON OR AFTER JULY 1, 2010. EXCEPT AS PROVIDED IN THIS SECTION, THE RETIREMENT SYSTEM SHALL DETERMINE THE SEPARATE EMPLOYER CONTRIBUTION RATE IN THE MANNER PRESCRIBED IN SECTION 41.

(2) 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.

Sec. 42. (1) Beginning with the 1994-95 state fiscal year, a reporting unit shall contribute the entire percentage, determined under section 41(2), of the aggregate annual compensation of all employees who are members under the noncontributory plan as provided by section 63 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 shall not be 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 pursuant to section 43a for all compensation paid on or after January 1, 1987 and reported to the retirement system. Although considered contributions of a member for certain purposes under this act, all contributions picked up shall be treated as paid by the employer in lieu of contributions by the employee. Contributions picked up as provided in this subsection shall 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 shall not be included as gross income of the member until they are distributed or made available to the member, retiree, retirement allowance beneficiary, or refund beneficiary.

(3) The employer shall deduct from a member's compensation the contributions for social security provided in ~~Act No. 205 of the Public Acts of 1951, being sections 38.851 to 38.871 of the Michigan Compiled Laws 1951 PA 205, MCL 38.851 TO 38.871.~~ Contributions shall 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 shall 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 investment plan contributions to the retirement system monthly. 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 monthly. ON A SCHEDULE AND IN A MANNER DETERMINED BY THE RETIREMENT SYSTEM.

(6) By January 11, April 11, July 11, and October 11 of each year, each reporting unit official shall file with the executive secretary of the retirement board a quarterly affidavit for the preceding 3 months. The affidavit shall certify the aggregate

compensation that is reportable to the retirement system under section 3a, sources of contributions, wages paid from federal funds, and contributions required by law. Not later than July 11 of each year, a report shall be filed with the executive secretary of the retirement board, which shall list the persons employed, together with other information, including salary, service, and contributions, required for retirement reporting purposes. **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 SHALL CONTAIN THE INFORMATION ON A PAY PERIOD BASIS AND SHALL 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, a late fee shall be paid by the reporting unit. If the remittance of contributions is late, the late fee shall include interest for each day that the remittance of contributions is late. The retirement board periodically may establish the late fee, which shall not be less than \$25.00, and interest charges, which shall not be less than 6% per annum. **IF A REPORTING UNIT FAILS TO CORRECT ERRORS ON A REPORT BEFORE THE ERRORS ARE DISCOVERED BY THE RETIREMENT SYSTEM OR IF SUCH ERRORS ARE INTENTIONAL, THE REPORTING UNIT SHALL PAY THE LATE FEE AND INTEREST CHARGES AS DESCRIBED IN THIS SUBSECTION FOR EACH DAY THAT THE REPORT IS IN ERROR, UNLESS REASONABLE CAUSE IS SHOWN TO THE SATISFACTION OF THE RETIREMENT SYSTEM.**

(8) Upon 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.

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.

SEC. 43E. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, BEGINNING JULY 1, 2010, EACH MEMBER SHALL CONTRIBUTE 3% OF THE MEMBER'S COMPENSATION TO THE APPROPRIATE FUNDING ACCOUNT ESTABLISHED UNDER THE PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT. FOR THE SCHOOL FISCAL YEAR THAT BEGINS JULY 1, 2010, MEMBERS WHO WERE EMPLOYED BY A REPORTING UNIT AND WERE PAID LESS THAN \$18,000.00 IN THE PRIOR SCHOOL FISCAL YEAR AND MEMBERS WHO WERE HIRED ON OR AFTER JULY 1, 2010 WITH A STARTING SALARY LESS THAN \$18,000.00 SHALL CONTRIBUTE 1.5% OF THE MEMBER'S COMPENSATION TO THE APPROPRIATE FUNDING ACCOUNT ESTABLISHED UNDER THE PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT. FOR EACH SCHOOL FISCAL YEAR THAT BEGINS ON OR AFTER JULY 1, 2011, MEMBERS WHOSE YEARLY SALARY IS LESS THAN \$18,000.00 SHALL CONTRIBUTE 3% OF THE MEMBER'S COMPENSATION TO THE APPROPRIATE FUNDING ACCOUNT ESTABLISHED UNDER THE PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT. THE MEMBER CONTRIBUTIONS SHALL BE DEDUCTED BY THE EMPLOYER AND REMITTED AS EMPLOYER CONTRIBUTIONS IN A MANNER THAT THE RETIREMENT SYSTEM SHALL DETERMINE.

(2) AS USED IN THIS ACT, "FUNDING ACCOUNT" MEANS THE APPROPRIATE IRREVOCABLE TRUST CREATED IN THE PUBLIC EMPLOYEE RETIREMENT HEALTH CARE FUNDING ACT FOR THE DEPOSIT OF FUNDS AND THE PAYMENT OF RETIREMENT HEALTH CARE BENEFITS.

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 by a reporting unit, the following shall take place:

(a) The retirant shall not be entitled to a new final average compensation or additional service credit under this retirement system unless additional service is performed equivalent to 5 or more years of service credit or, if the retirant has contributed to the member investment plan, the equivalent of 3 or more years of service credit. The retirant may elect to have the retirement allowance recomputed based on the added credit or the final average compensation resulting from the added service, or both. A retirement allowance shall not be recomputed until the retirant pays into the retirement system an amount equal to the retirant's new final average compensation multiplied by the percentage determined under section 41(2) for normal cost and unfunded actuarial accrued liabilities, not including the percentage required for the funding of health benefits, multiplied by the total service credit in the period in which the retirant's additional service was performed.

(b) The retirant's retirement allowance shall be reduced by the lesser of the amount that the earnings in a calendar year exceed the amount permitted without a reduction of benefits under the social security act, chapter 531, 49 Stat. 620, or 1/3 of the retirant's final average compensation. For purposes of computing allowable earnings under this subdivision, the final average compensation shall be increased by 5% for each full year of retirement.

(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 if all of the following circumstances exist:

(a) The retirant is a former teacher or administrator employed in a teaching or research capacity by a university that is considered a reporting unit for the limited purpose described in section 7(3).

(b) The retirant is not eligible to use any service or compensation attributable to the employment described in subdivision (a) for a recomputation of his or her retirement allowance.

(c) A university ~~that~~ **WHICH** employs a retirant pursuant to this subsection shall report such employment to the retirement system by July 1 of each year. The report to be filed shall include the name of the retirant, the capacity in which the retirant is employed, and the total annual compensation paid to the retirant.

(4) Until July 1, 2011, subsection (1) does not apply to a retirant if all of the following circumstances exist:

(a) The retirant is employed by a reporting unit that has an approved emergency situation, not including a situation caused by a labor dispute, that necessitates the hiring of a retirant in the capacity of a teacher, principal, stationary engineer, administrator, or other category as determined by the superintendent of public instruction to prevent depriving students of an education. The chief executive officer or superintendent of the school district shall include with the written notification documentation showing that more than 8% of all classes in the district during the 1998-99 school year are taught by full-time substitute teachers who are not certificated in the subjects or grade levels which they teach. Within 30 days after receipt of the notification and documentation under this subdivision, the department of education shall notify the chief executive officer or superintendent and the retirement system of its approval or disapproval of the emergency situation. If disapproved by the department of education, this subsection does not apply.

(b) The retirant is employed under an emergency situation described in subdivision (a) for a period not to exceed 6 years.

(c) The retirant is not eligible to use any service or compensation attributable to the employment described in subdivision (a) for a recomputation of his or her retirement allowance.

(5) ~~On or before July 1, 1999, the~~ **THE** state superintendent of public instruction shall compile a listing of critical shortage disciplines. This listing shall be updated annually.

(6) Until July 1, 2011, subsection (1) does not apply to a retirant if all of the following circumstances exist:

(a) The retirant is employed by a reporting unit that has a situation, not including a situation caused by a labor dispute, that necessitates the hiring of a retirant in an area that has been identified by the state superintendent of public instruction as a critical shortage discipline pursuant to subsection (5).

(b) The retirant is employed under a situation described in subdivision (a) for a period not to exceed 6 years.

(c) The retirant is not eligible to use any service or compensation attributable to the employment described in subdivision (a) for a recomputation of his or her retirement allowance.

(7) ~~The provisions of subsections (4) and~~ **SUBSECTION** (6) shall only apply for retirants who have been retired for at least 12 months before becoming employed under this section.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, FOR ANY RETIRANT WHO RETIRES ON AND AFTER JULY 1, 2010, AND FOLLOWING A BONA FIDE TERMINATION, INCLUDING NOT WORKING IN THE MONTH OF THE RETIRANT'S RETIREMENT EFFECTIVE DATE, AND WHO BECOMES EMPLOYED BY A REPORTING UNIT AND THE RETIRANT'S AMOUNT OF EARNINGS IN A CALENDAR YEAR EXCEEDS 1/3 OF THE RETIRANT'S FINAL AVERAGE COMPENSATION, THE RETIRANT SHALL FORFEIT HIS OR HER RETIREMENT ALLOWANCE AND THE RETIREMENT SYSTEM SUBSIDY FOR HEALTH CARE BENEFITS FROM THE RETIREMENT SYSTEM FOR AS LONG AS THE RETIRANT IS EMPLOYED AT THE REPORTING UNIT. ANY RETIRANT WHO HAS FORFEITED THE RETIREMENT SYSTEM SUBSIDY FOR HEALTH

CARE BENEFITS AND WANTS TO RETAIN HEALTH CARE BENEFITS SHALL PAY THE RETIRANT'S AND RETIREMENT SYSTEM'S COSTS FOR SUCH HEALTH CARE BENEFITS. UPON TERMINATION OF EMPLOYMENT AT THE REPORTING UNIT, THE RETIREMENT ALLOWANCE AND HEALTH CARE BENEFITS SHALL RESUME WITHOUT RECALCULATION.

(9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, FOR ANY RETIRANT WHO RETIRES ON AND AFTER JULY 1, 2010, WHO PERFORMS CORE SERVICES AT A REPORTING UNIT AS DETERMINED BY THE RETIREMENT SYSTEM, BUT WHO IS EMPLOYED BY AN ENTITY OTHER THAN THE REPORTING UNIT OR IS AN INDEPENDENT CONTRACTOR, THE RETIRANT SHALL FORFEIT HIS OR HER RETIREMENT ALLOWANCE AND THE RETIREMENT SYSTEM SUBSIDY FOR HEALTH CARE BENEFITS FROM THE RETIREMENT SYSTEM FOR AS LONG AS THE RETIRANT IS PERFORMING CORE SERVICES AT THE REPORTING UNIT. ANY RETIRANT WHO HAS FORFEITED THE RETIREMENT SYSTEM SUBSIDY FOR HEALTH CARE BENEFITS AND WANTS TO RETAIN HEALTH CARE BENEFITS SHALL PAY THE RETIRANT'S AND RETIREMENT SYSTEM'S COSTS FOR SUCH HEALTH CARE BENEFITS. UPON TERMINATION OF SERVICES AT THE REPORTING UNIT, THE RETIREMENT ALLOWANCE AND HEALTH CARE BENEFITS SHALL RESUME WITHOUT RECALCULATION.

Sec. 81. (1) ~~A~~ 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) ~~For~~ 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.

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 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION 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 5-YEAR PERIOD.

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, UPON THE MEMBER'S WRITTEN APPLICATION TO THE RETIREMENT SYSTEM, SHALL BE 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.

(2) THE ELIGIBILITY REQUIREMENTS OF SUBSECTION (1) SHALL NOT BE MODIFIED AS PROVIDED IN SECTION 43B.

(3) THE REDUCTION PROVIDED FOR IN SECTION 84(2) SHALL NOT APPLY TO A PERSON WHO RETIRES PURSUANT TO 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 UPON RETIREMENT.

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(a)~~ 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 retiree's allowance shall be determined pursuant to section 83.

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(a)~~**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 retiree'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 retiree'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 retiree's worker's disability compensation, if any, arising on account of the retiree's reporting unit service, the retiree shall be given service credit for the period and the retiree's disability retirement allowance shall be adjusted to include the additional credit.

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 retiree 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 retiree 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 retiree 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 retiree 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) The retirement system shall pay 90% of the monthly premium or membership or subscription fee for dental, vision, and hearing benefits for the benefit of a retiree 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 retiree who first becomes a member after June 30, 2008.

(5) 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 retiree receiving benefits under subsection (1) or (2). Payment shall not exceed 90% of the actual monthly premium or membership or subscription fee. The retirement system shall pay 90% of the monthly premium or membership or subscription fee for dental, vision, and hearing benefits described in subsection (4) for the benefit of each health insurance dependent of a retiree receiving benefits under subsection (4). Payment for health benefits coverage for a health insurance dependent of a retiree shall not be made after the retiree's death, unless the retiree

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%. 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, the retirement system shall pay up to 90% of the monthly premium or membership or subscription fee for the hospital, medical-surgical, and sick care benefits plan, the dental plan, vision plan, and hearing 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 90% of the monthly premium or membership or subscription fee for the hospital, medical-surgical, and sick care benefits plan, the dental plan, vision plan, and hearing 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. 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's service credit shall be counted for purposes of subsection (8) and this subsection 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, vision plan, or hearing 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, vision plan, or hearing 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, vision plan, and hearing 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 provided that payment for the elected coverages is the responsibility of the surviving spouse and is paid in a manner prescribed by the retirement system.

(15) 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.

(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.

(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 1396v.

(c) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395hhh.

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.

ARTICLE 7

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.

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.

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.

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.

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 UPON THE PAYROLL OF HIS OR HER EMPLOYER ON OR AFTER JULY 1, 2010, AND WHO ALSO QUALIFIES TO BE A MEMBER OF TIER 1.

(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.

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.

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.

SEC. 127. 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 38.1140M, DO NOT APPLY TO TIER 2.

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.

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.

SEC. 131. (1) THIS SECTION IS SUBJECT TO THE VESTING REQUIREMENTS OF SECTION 132.

(2) UNLESS THE QUALIFIED PARTICIPANT AS DESCRIBED IN SECTION 124(2) 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 AS DESCRIBED IN SECTION 124(2) 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) UPON THE WRITTEN DETERMINATION OF THE DIRECTOR OF THE OFFICE OF RETIREMENT SERVICES, AN EMPLOYEE OF AN EMPLOYER THAT IS NOT A QUALIFIED PARTICIPANT AS DESCRIBED IN SECTION 124(2) 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 SHALL BE TREATED AS A QUALIFIED PARTICIPANT UNDER THIS ARTICLE FOR THE LIMITED PURPOSES OF HIS OR HER TIER 2 ACCOUNT.

(5) UPON 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 SUBSECTION (2), TO AN EMPLOYEE'S TIER 2 ACCOUNT AS PERMITTED BY THE PLAN DOCUMENT AND THE INTERNAL REVENUE CODE. MATCHING CONTRIBUTIONS UNDER THIS SUBSECTION SHALL 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.

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%.

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.

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.

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.

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. This amendatory act does not take effect unless House Bill No. 4073 of the 95th Legislature is enacted into law.

Third: That the Senate and House agree to the title of the bill to read as follows:

A bill to amend 1980 PA 300, 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 certain state departments, agencies, officials, and employees; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 4, 25, 26, 41, 42, 43c, 61, 81, 86, 87, and 91 (MCL 38.1304, 38.1325, 38.1326, 38.1341, 38.1342, 38.1343c, 38.1361, 38.1381, 38.1386, 38.1387, and 38.1391), section 4 as amended by 2008 PA 354, sections 25 and 26 as amended by 1997 PA 143, section 41 as amended by 2007 PA 15, section 42 as amended by 1996 PA 268, section 43c as amended by 1998 PA 213, section 61 as amended by 2006 PA 158, section 81 as amended by 1989 PA 194, and section 91 as amended by 2007 PA 110, and by adding sections 41b, 43e, 81b, 81c, and 92a and article 7.

Judson Gilbert II
Mark Jansen
Conferees for the Senate

Martin Griffin
James Bolger
Conferees for the House

Pending the order that, under joint rule 9, the conference report be laid over one day,

Senator Cropsey moved that the rule be suspended.

The motion prevailed, a majority of the members serving voting therefor.

The question being on the adoption of the conference report,

The first conference report was adopted, a majority of the members serving voting therefor, as follows:

Roll Call No. 238**Yeas—21**

Allen	Garcia	Kuipers	Sanborn
Birkholz	George	McManus	Stamas
Bishop	Gilbert	Nofs	Switalski
Brown	Jelinek	Pappageorge	Thomas
Cassis	Kahn	Richardville	Van Woerkom
Cropsey			

Nays—14

Anderson	Clark-Coleman	Jacobs	Prusi
Barcia	Clarke	Jansen	Scott
Brater	Gleason	Olshove	Whitmer
Cherry	Hardiman		

Excused—3

Basham	Hunter	Patterson
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Not Voting—0

In The Chair: Richardville

The question being on concurring in the committee recommendation to give the bill immediate effect,
The recommendation was concurred in, 2/3 of the members serving voting therefor.

Protests

Senators Prusi, Whitmer, Brater and Hardiman, under their constitutional right of protest (Art. 4, Sec. 18), protested against the adoption of the first conference report on Senate Bill No. 1227.

Senator Prusi moved that the statement he made during the discussion of the conference report be printed as his reasons for voting “no.”

The motion prevailed.

Senator Prusi’s statement, in which Senators Whitmer and Brater concurred, is as follows:

There really is no disagreement in this body about the importance we place on education. The education of our children and our young people is probably the most important thing that we can do to build a just and equal society and make sure that they are properly trained for the jobs of the future. I think there is also lack of disagreement over the fact that our schools have been struggling, and we have not yet found the ways to adequately fund the education that is called for in this century.

After the parents, the most important person in a child’s education is the teacher in front of the classroom. We struggle to find ways to balance our budgets. We struggle to find ways to adequately fund the programs that we need to see in our school districts. The only way this body seems to be able to find something to do that is to take it out of the hides of the people who are most critical to our children’s education—the teachers at the front of the classroom.

These are people who have devoted their careers, who have continued in education requirements, who have been struggling to maintain their health care benefits and giving up any wage increases—year in and year out. Now what are we going to do? We are going to pile it on top of them once again and not even offer them the security of the 3 percent

that we are going to clip out of their paychecks every two weeks is going to be there for them when they need the health care when they do retire.

I would encourage members to reject this conference committee report. There are still a couple of things that we can do to make this a better bill and make sure that the people who are funding these reforms—the school employees—have adequate security as they put their money into this pension plan or into this health care trust. I would encourage members to reject this conference committee report. Let's continue to work on it and make it fair for everybody. Let's find a way to balance our budgets without doing it on the backs of the employees whom our children rely on so heavily to get a decent education.

Senator Hardiman's statement is as follows:

I would like to thank the Senator from the 25th District for his work on this very important legislation. I would remind everyone that I voted for the bill as it was first passed out of the Senate. I did not vote for this bill for a few reasons, and I would just highlight a couple. I believe that this bill creates winners and losers. The increase in the multiplier creates undue burden on some of the districts around the state and some in my district.

It would require that the MPSERS percentage goes up, adding more cost. I would read from the analysis: "Local savings in the initial years will not be affected via a lower MPSERS contribution rate because the pension system will have to pay for the enhanced multiplier and the early-out. In fact, the contribution rate likely will increase in the short term above what it otherwise would have been."

I think it certainly hits those districts that have offered incentives for retirement already after the Senate has passed a few of its deadlines. They have offered them and achieved them at a lower cost but would share in the higher cost and would not have the savings. I do think that it would hurt some of the districts. In fact, Grand Rapids, for example, would pay \$1 million for every percentage increase in the MPSERS rate. For that reason and others, I did have to vote against this.

By unanimous consent the Senate proceeded to the order of

Third Reading of Bills

Senator Cropsey moved that the rules be suspended and that the following bill, now on the order of Third Reading of Bills, be placed on its immediate passage at the head of the Third Reading of Bills calendar:

House Bill No. 4073

The motion prevailed, a majority of the members serving voting therefor.

Senator Thomas moved that Senators Clark-Coleman and Scott be excused from the balance of today's session. The motion prevailed.

The following bill was read a third time:

House Bill No. 4073, entitled

A bill to authorize and create irrevocable trusts for the purpose of holding, investing, and distributing assets to be used for certain postemployment health care benefits; to set forth certain rights that public employees have in retirement health care benefits 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.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 239

Yeas—23

Birkholz	George	Kahn	Sanborn
Bishop	Gilbert	Kuipers	Stamas
Brown	Hardiman	McManus	Switalski
Cassis	Jacobs	Nofs	Thomas
Cropsey	Jansen	Pappageorge	Van Woerkom
Garcia	Jelinek	Richardville	

Nays—10

Allen	Brater	Gleason	Prusi
Anderson	Cherry	Olshove	Whitmer
Barcia	Clarke		

Excused—5

Basham	Hunter	Patterson	Scott
Clark-Coleman			

Not Voting—0

In The Chair: Richardville

The question being on concurring in the committee recommendation to give the bill immediate effect,
The recommendation was concurred in, 2/3 of the members serving voting therefor.
The Senate agreed to the title of the bill.

Senator Bishop asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Bishop's statement is as follows:

I just want to make some specific notes with regard to this bill. There is a lot of talk about this and what it does and what it doesn't do. I just want to reiterate what my good colleague from Algonac mentioned earlier on General Orders to make sure that we make a record of the following with regard to House Bill No. 4073 (S-4).

We worked with the Office of Retirement Services and made requested corrections. We have stripped out language creating a separate account for specified groups or members in Section 4(2). In this substitute, we have eliminated Section 17, the entire section, which created a contractual right to health care. We also inserted language in Section 3(6) to assure that there is no individual guaranteed health care benefit in this trust. Health care is not guaranteed now in any provision, and the establishment of this trust does not in any way guarantee health care benefits in the future.

Lastly, this trust is simply a pass-through mechanism to pay current health care claims for current retirees. I make these comments because I think it is important for the record to reflect legislative intent. If there is ever any need to take judicial notice of the intent of the Legislature, I would expect that these words would be considered.

Committee Reports

The Committee on Appropriations reported

Senate Bill No. 1164, entitled

A bill to make appropriations for the department of transportation for the fiscal year ending September 30, 2011; and to provide for the expenditure of the appropriations.

With the recommendation that the substitute (S-1) be adopted and that the bill then pass.

The committee further recommends that the bill be given immediate effect.

Ron Jelinek
Chairperson

To Report Out:

Yeas: Senators Jelinek, Pappageorge, Hardiman, Kahn, Cropsey, Garcia, George, Jansen, Brown, McManus and Stamas

Nays: Senators Switalski, Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

The Committee on Appropriations reported

House Bill No. 5406, entitled

A bill to make, supplement, and adjust appropriations for various state departments and agencies for the fiscal year ending September 30, 2010; and to provide for the expenditure of the appropriations.

With the recommendation that the bill pass.

The committee further recommends that the bill be given immediate effect.

Ron Jelinek
Chairperson

To Report Out:

Yeas: Senators Jelinek, Pappageorge, Hardiman, Kahn, Cropsey, Garcia, Jansen, Brown, McManus, Stamas, Switalski, Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Appropriations reported

House Bill No. 5880, entitled

A bill to make, supplement, and adjust appropriations for the departments of attorney general, civil rights, state, technology, management, and budget, and treasury, the executive office, and the legislative branch for the fiscal year ending September 30, 2011; to provide for the expenditure of these appropriations; to provide for the funding of certain work projects; to provide for the imposition of certain fees; to establish or continue certain funds, programs, and categories; to transfer certain funds; to prescribe certain requirements for bidding on state contracts; to provide for disposition of year-end balances; to prescribe the powers and duties of certain principal executive departments and state agencies, officials, and employees; and to provide for the disposition of fees and other income received by the various principal executive departments and state agencies.

With the recommendation that the substitute (S-1) be adopted and that the bill then pass.

The committee further recommends that the bill be given immediate effect.

Ron Jelinek
Chairperson

To Report Out:

Yeas: Senators Jelinek, Pappageorge, Hardiman, Kahn, Cropsey, Garcia, George, Jansen, Brown, McManus and Stamas

Nays: Senators Switalski, Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

The Committee on Appropriations reported

House Bill No. 5884, entitled

A bill to make appropriations for the department of energy, labor, and economic growth and certain other state purposes for the fiscal year ending September 30, 2011; to provide for the expenditure of those appropriations; to provide for the imposition of certain fees; to provide for the disposition of fees and other income received by the state agencies; to provide for reports to certain persons; and to prescribe powers and duties of certain state departments and certain state and local agencies and officers.

With the recommendation that the substitute (S-1) be adopted and that the bill then pass.

The committee further recommends that the bill be given immediate effect.

Ron Jelinek
Chairperson

To Report Out:

Yeas: Senators Jelinek, Pappageorge, Hardiman, Kahn, Cropsey, Garcia, George, Jansen, Brown, Stamas and Switalski

Nays: Senators Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

The Committee on Appropriations reported

House Bill No. 5885, entitled

A bill to make appropriations for the department of military and veterans affairs for the fiscal year ending September 30, 2011; to provide for the expenditure of the appropriations; to provide for certain powers and duties of the department of military and veterans affairs, other state agencies, and local units of government related to the appropriations; and to provide for the preparation of certain reports related to the appropriations.

With the recommendation that the substitute (S-1) be adopted and that the bill then pass.
The committee further recommends that the bill be given immediate effect.

Ron Jelinek
Chairperson

To Report Out:

Yeas: Senators Jelinek, Pappageorge, Hardiman, Kahn, Cropsey, Garcia, George, Jansen, Brown, Stamas, Switalski, Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

Nays: None

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

COMMITTEE ATTENDANCE REPORT

The Committee on Appropriations submitted the following:

Meeting held on Wednesday, May 12, 2010, at 2:00 p.m., Senate Appropriations Room, 3rd Floor, Capitol Building

Present: Senators Jelinek (C), Pappageorge, Hardiman, Kahn, Cropsey, Garcia, George, Jansen, Brown, McManus, Stamas, Switalski, Anderson, Barcia, Brater, Cherry, Clark-Coleman and Scott

Scheduled Meetings

Appropriations -

Subcommittee -

Community Health Department - Thursday, May 27, 1:00 p.m., Room 110, Capitol Building (373-2768)

Campaign and Election Oversight - Wednesday, May 19, 12:00 noon, Room 405, Capitol Building (373-1725)

Economic Development and Regulatory Reform - Wednesday, May 19, 1:00 p.m., Rooms 402 and 403, Capitol Building (373-7670)

Senator Cropsey moved that the Senate adjourn.

The motion prevailed, the time being 1:58 a.m.

The President pro tempore, Senator Richardville, declared the Senate adjourned until Tuesday, May 18, 2010, at 10:00 a.m.

CAROL MOREY VIVENTI
Secretary of the Senate

