STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN COALITION OF STATE EMPLOYEE UNIONS; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCAL 6000; MICHIGAN CORRECTIONS ORGANIZATION/SEIU; MICHIGAN PUBLIC EMPLOYEES/SEIU LOCAL 517M; MICHIGAN STATE EMPLOYEES ASSOCIATION, AFSCME, LOCAL 5; MICHIGAN AFSCME COUNCIL 25; and ANTHONY McNEILL, RAY HOLMAN, ANDREW POTTER, ED CLEMENTS, AMY LIPSET, WILLIAM RUHF, KENNETH MOORE, RUSSELL WATERS, MARK MOZDZEN and KATHLEEN WINE, on behalf of themselves and a similarly situated class,

Plaintiffs,

vs.

STATE OF MICHIGAN; MICHIGAN STATE EMPLOYEES RETIREMENT SYSTEM; MICHIGAN STATE EMPLOYEES RETIREMENT SYSTEM BOARD; MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET; JOHN NIXON, as the Director of the Michigan Department of Technology, Management and Budget; PHIL STODDARD, as the Director of the Office of Retirement Services of the Michigan Department of Technology, Management and Budget; and ANDY DILLON, as the Treasurer of the State of Michigan,

Defendants.

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

Case No. 12-117-MM
Hon. JOYCE DRAGANCHUK

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VERIFIED COMPLAINT

Plaintiffs, and all persons in the proposed class described herein, by their attorneys, state:

1. This action is brought to challenge the constitutionality of Public Act 264 of 2011 as an addition to Public Act 240 of 1943, the State Employees' Retirement Act of 1943 ("Retirement Act"), because in violation of Article XI, Section 5 of the Michigan Constitution Public Act 264 purports to establish conditions of employment for State employees in multiple respects with neither the approval nor consent nor even input from the Michigan Civil Service Commission ("MCSC").

2. This action is brought by: a) the Michigan Coalition of State Employee Unions ("Coalition"), b) the union plaintiffs, the collective bargaining representatives that represent the individual plaintiffs, and c) the individual plaintiffs as a class action, pursuant to MCR 3.501, on behalf of themselves and a similarly situated class of members of the Michigan State Employees

Retirement System ("MSERS") who are represented in collective bargaining by the union plaintiffs.

3. This complaint seeks declaratory, injunctive and monetary relief.

JURISDICTION AND VENUE

4. This Court has jurisdiction under MCL 600.6419 (claims against the state) and 600.6419A (claims for equitable relief and declaratory judgment).

5. Venue is proper in Ingham County pursuant to MCL 600.6404 (actions in the Court of Claims).

PARTIES

6. The Coalition is an alliance of the plaintiff unions identified below.

7. Plaintiff International Union, United Automobile, Aerospace, Agricultural Implement Workers of America ("UAW") is a voluntary unincorporated association with its principal offices at 8000 E. Jefferson in Detroit, Michigan.

8. Plaintiff Local 6000, UAW is a voluntary unincorporated association with its principal offices at 3350 N. Grand River, Lansing, Michigan.

9. Plaintiff Michigan Corrections Organization/SEIU ("MCO") is a voluntary unincorporated association with its principal offices at 421 W. Kalamazoo, Lansing, Michigan.

10. Plaintiff Michigan Public Employees/SEIU Local 517M ("Local 517M") is a voluntary unincorporated association with its principal offices at 6035 Executive Drive, Suite 204, Lansing, Michigan.

11. Plaintiff Michigan State Employees Association, AFSCME, Local 5 ("MSEA") is a voluntary unincorporated association with its principal offices at 1026 E. Michigan Avenue, Lansing, Michigan.

12. Plaintiff Michigan AFSCME Council 25 ("Council 25") is a voluntary unincorporated association with its principal offices at 1034 N. Washington Avenue, Lansing, Michigan.

13. The Coalition and the above-named plaintiff unions are suing on behalf of State employees whom they represent in collective bargaining as permitted by Michigan law. *Michigan Coalition of State Employee Unions v. Civil Service Commission*, 236 Mich App 96, 107 (1999), *rev'd on other grounds*, 465 Mich 212 (2001).

14. Plaintiff Anthony McNeill resides at 27221 Arlington, Southfield, Michigan. He is a citizen of the State of Michigan, a defined contribution ("DC") member of MSERS and is covered under a collective bargaining agreement between the State and the UAW and its Local 6000.

15. Plaintiff Ray Holman resides at 1422 Haslett Road, Haslett, Michigan. He is a citizen of the State of Michigan, a defined benefits ("DB") member of MSERS and is covered under a collective bargaining agreement between the State and the UAW and its Local 6000.

16. Plaintiff Andrew Potter resides at 7769 Woodland Road, Lake Odessa, Michigan. He is a citizen of the State of Michigan, a DB member of MSERS and is covered under a collective bargaining agreement between the State and MCO.

17. Plaintiff Ed Clements resides at 952 U.S. Hwy. 41, L'Anse, Michigan. He is a citizen of the State of Michigan, a DC member of MSERS and is covered under a collective bargaining agreement between the State and MCO.

18. Plaintiff Amy Lipset resides at 211 Rosamond, Lansing, Michigan. She is a citizen of the State of Michigan, a DC member of MSERS and is covered under a collective bargaining agreement between the State and SEIU Local 517M.

19. Plaintiff William Ruhf resides at 8633 Peterson NE, Rockford, Michigan. He is a citizen of the State of Michigan, a DB member of MSERS and is covered under a collective bargaining agreement between the State and SEIU Local 517M.

20. Plaintiff Kenneth Moore resides at 8650 S. State Road, Portland, Michigan. He is a citizen of the State of Michigan, a DC member of MSERS and is covered under a collective bargaining agreement between the State and MSEA.

21. Plaintiff Russell Waters resides at 224 Elm, Grand Ledge, Michigan. He is a citizen of the State of Michigan, a DB member of MSERS and is covered under a collective bargaining agreement between the State and MSEA.

22. Plaintiff Mark Mozdzen resides at 259 Crawford, Deford, Michigan. He is a citizen of the State of Michigan, a DB member of MSERS and is covered under a collective bargaining agreement between the State and Council 25.

23. Plaintiff Kathleen Wine resides at 92161 Gravel Lake Drive, Lawton, Michigan. She is a citizen of the State of Michigan, a DC member of MSERS and is covered under a collective bargaining agreement between the State and Council 25.

24. Defendant State of Michigan is the sponsor of the MSERS, the direct employer of substantially all MSERS participants and a party to the collective bargaining agreements described below.

25. Defendant Michigan State Employees Retirement System Board, ("Retirement Board"), was established pursuant to Section 2 of the Retirement Act, MCL 38.2, and has a duty to administer and manage defendant MSERS on behalf of class members.

26. Defendant Michigan Department of Technology, Management and Budget ("DTMB") has the responsibility to assist in the day-to-day operation and administration of MSERS.

27. Defendant John Nixon is the Director of the DTMB and is sued in that capacity.

28. Defendant Phil Stoddard is the Director of Office of Retirement Services of the DTMB and is sued in that capacity.

29. Defendant Andy Dillon is the Treasurer of the State of Michigan and is sued in that capacity.

CLASS ACTION

30. The above named individual plaintiffs ("Class Representatives") bring a class action on behalf of themselves and all other similarly situated members of the MSERS who are represented for collective bargaining purposes by one of the above named unions.

31. The exact number of members of the class is not presently known, but is approximately 34,000 and is so numerous that joinder of individual members in this action is impracticable.

32. There are common questions of law and fact that relate to and affect each member of the class. The relief sought is common to the entire class.

33. The claims of the Class Representatives are typical of the claims of the class.

34. There is no conflict between any Class Representative and other members of the class with respect to this action.

35. The Class Representatives are representative parties for the class and are able to and will fairly and adequately protect the interests of the class.

36. The attorney for the Class Representatives is experienced and capable in the field of labor law and class action litigation.

37. Defendants have acted on grounds generally applicable to the class, thereby making final injunctive relief or corresponding injunctive relief appropriate with respect to the class as a whole.

38. This action is properly maintained as a class action in that the prosecution of separate actions by individual members would create a risk of adjudication with respect to individual members that would establish incompatible standards of conduct for the defendants.

39. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

THE MICHIGAN CIVIL SERVICE COMMISSION

40. The MCSC is a bi-partisan commission consisting of four non-salaried persons appointed by the Governor to serve eight year staggered terms. The administration of the MCSC's powers is vested in a state personnel director who is selected by the MCSC

41. The MCSC regulates the terms and conditions of employment of State employees and has plenary and absolute authority in that respect. *AFSCME Council 25 v State Employees Retirement System,* ___ Mich App ___, 2011 WL 3760877, *lv den* 490 Mich 935 (2011).

42. This Court has recognized that the scope of the power of the MCSC is unique among the fifty states because the MCSC is vested with final decision-making power that is generally exercised by the legislature. *Attorney General Bill Schuette v Michigan Civil Service Commission,* unpublished opinion of the Court of Claims at page 3, issued 6 October 2011 (Docket No 11-538-CZ).

43. For example, a citizens advisory task force appointed during Governor Milliken's administration found that: "In Michigan, the Commission exercises the function of determining the terms and conditions of employment in the classified civil service usually performed by the

legislatures in other states." *Report of the Michigan Citizens Advisory Task Force on Civil Service Reform* (July 1979) at page 12.

44. For example, a citizens advisory task force formed during the administration of Governor Blanchard recognized that: "Such plenary authority [as set out in Article XI, Section 5 of the Michigan constitution quoted below] vested in the [MCSC] by Constitution is unique among the 50 states." *Citizens Advisory Task Force on State Labor-Management Relations* (September 1987) at page 4.

AS A MATTER OF HISTORICAL FACT THE AUTHORITY AND POWER OF THE MCSC EXTENDS TO THE RETIREMENT BENEFITS OF STATE EMPLOYEES

45. This plenary authority over the terms and conditions of employment of State employees extends to retirement benefits of current state employees in cooperation with the Legislature and in recognition of the separation of powers as set forth in Article III, Section 2 of the Michigan Constitution.

46. For example, in 1941 the MCSC by rule mandated the development of a retirement plan for State employees to be submitted 'to the commission for approval." Civil Service Rule XXXVIII (1941). Two years later the Legislature in cooperation with the MCSC enacted the Retirement Act.

47. For example, in 1963 the MCSC re-wrote its rule on retirement to provide: "Cooperation With State Retirement Board – The state personnel director shall cooperate with the State Employees' Retirement Board in maintaining a comprehensive contributory retirement system for state civil service employees." Civil Service Rule 31.1 (1963).

48. For example, in 1973 the MCSC created a non-contributing retirement plan and retirement improvements for classified employees. Civil Service Commission Minutes (4 December 1973) at pages 2-5. The Legislature then adjusted its retirement legislation to comply

with the MCSC's directive, repealing the statutes requiring employee contributions. 1974 PA 216.

49. By stark contrast, in 2010 the Legislature without the approval of the MCSC unconstitutionally amended the Retirement Act with Public Act 256, MCL 38.35, to require a three percent employee compensation contribution to finance the public employee retirement health care funding act, MCL 38.2731 to 38.2747. *AFSCME Council 25 v State Employees Retirement System,* ___ Mich App ___, 2011 WL 3760877, *lv den* 490 Mich 935 (2011).

BACKGROUND FACTS

50. From August to October 2011, the Coalition bargained with defendant State of Michigan, through the Office of the State Employer, for successor collective bargaining agreements for each of the five plaintiff unions, ultimately reaching tentative agreements on behalf of each that are effective 1 January 2012 for non-economic terms and 1 October 2012 for economic terms and expire 31 December 2013 and that set compensation rates and other conditions of employment. The State is in possession of these agreements.

51. The Coalition in this bargaining sought to bargain about retirement benefits for current employees. Defendant State of Michigan deferred to the MCSC and no such bargaining occurred.

52. On various dates in latter 2011 the members of plaintiff unions ratified these tentative agreements.

53. These agreements provide for: a) a one percent increase in rates of compensation in October 2012, b) in 2012 a lump sum payment of one percent of compensation that will not increase the compensation rate, c) in 2013 another such one percent lump sum payment, and d) increases in the amount of the health care premium paid by employees hired before April 2010

from five to fifteen percent for those in the health maintenance organization and from ten to twenty percent for those in the State health plan.

54. These agreements do not provide for any of the changes in conditions of employment the Legislature made with Public Act 264 described below at paragraph 57.

55. On 15 December 2011 the MCSC approved the terms of each of these agreements.

PUBLIC ACT 264

56. Effective the same day, 15 December 2011, the Legislature amended the Retirement Act by enacting Public Act 264. A copy is attached and also available at www.legislature.mi.gov.

57. On 15 December 2011 the House Fiscal Agency summarized the changes this legislation made to the MSERS benefits of current State employees as follows:

a) Eliminate the 3% employee contribution for retiree health care required of all employees since 2010 and refund contributions to employees.

b) Require employees in the SERS pension, or defined benefit (DB), plan to choose between remaining in the plan and contributing 4% of their compensation toward the plan or freezing their pension benefit and continuing their future service under the SERS 401(k), or defined contribution (DC), plan.

c) Eliminate retiree health insurance for employees hired on or after January 1, 2012, and replace it with a 401(k) or 457 plan employer match option of up to 2% of compensation plus a lump sum deposit of either $1,000 or $2,000 into a Health Reimbursement Account (HRA) upon termination of employment.

d) Provide existing DC plan employees (hired between March 31, 1997 and December 31, 2011) the option of retaining the current retirement graded premium health insurance plan or switching to the 401(k) or 457 plan employer match option of up to 2% of compensation. Employees who chose to switch plans would receive a lump sum contribution into either their 401(k) or 457 plan upon separation from the State in lieu of the retiree health insurance benefits they had already earned based on

current service. The lump sum amount would be calculated as described in detail below.

e) Allow employees who receive the 2% employer matching contribution in lieu of health benefits to purchase health care coverage from the State's health care plans upon retirement or separation from the state.

f) Prohibit employees from borrowing the employer matching contribution for retiree health care deposited in their tax-deferred accounts.

g) Maintains overtime pay in compensation for the purposes of calculating an employee's pension, but beginning January 1, 2012, would use a 6-year average of overtime pay, rather than a 3-year average used for other compensation.

h) Revise current DC matching provisions to create an automatic enrollment for employee contributions up to the state matching provisions and allow the state to match employee contributions into a 457 plan as well as the current 401(k) plans.

A copy of the full legislative analysis is attached and also available at www.legislature.mi.gov.

58. The Legislature made these changes without the approval or consent of the MCSC and without input from the MCSC.

59. The change described at paragraph 57(a) that undue the requirement of a three percent employee compensation contribution was of no legal effect because on 14 December 2011, the day before the effective date of this legislation, the Michigan Supreme Court, in the decision cited at paragraph 49, denied the State leave to appeal from the Court of Appeals decision that had declared the requirement unconstitutional.

60. By enacting Public Act 264 the Legislature at the same time it purported to remove this three percent employee compensation contribution requirement from MCL 38.35 substituted a four percent employee compensation contribution requirement on all State employees in the DB plan (at the very same MCL 38.35) under penalty of discontinuing their participation therein as described at paragraph 57(b).

61. Public Act 264 does not state that the changes contained therein were agreed to between the Legislature and members of MSERS as did the original Retirement Act (at what was then MCL 38.36) and in fact the members of MSERS did not agree to these changes.

VIOLATION OF ARTICLE XI, SECTION 5 OF THE MICHIGAN CONSTITUTION

62. Plaintiffs incorporate paragraphs 1-61.

63. Article XI, Section 5 of the Michigan Constitution states at paragraphs 4, 7 and 12:

> The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.
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> * * *
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> Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.
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> * * *

> No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

64. The Legislature's enactment of Public Act 264 violates Article XI, Section 5 of the Michigan Constitution when read as a whole because it was done without the approval or consent of the MCSC and with no input from the MCSC.

65. Specifically, the Legislature's enactment of Public Act 264 violates the requirement of Article XI, Section 5, paragraph 4 of the Michigan Constitution that the MCSC and only the MCSC "... regulate all conditions of employment in the classified service" in that this legislation regulates conditions of employment in the classified service.

66. Specifically, the Legislature's enactment of the four percent contribution requirement on the compensation of DB class members violates the requirement of Article XI, Section 5, ¶ 4 of the Michigan Constitution that the MCSC and only the MCSC "... fix rates of compensation for all classes of positions ...".

67. Specifically, the Legislature's enactment of the four percent contribution requirement on the compensation of DB class members violates the constitutional limitation on the power of the Legislature with respect to increases in rates of compensation which is to reject or reduce them by two-thirds vote within 60 calendar days of transmission set forth at Article XI, Section 5, ¶ 7 of the Michigan Constitution.

68. Class members will be damaged by these changes in multiple respects, including but not limited to DB plan members who will be required to contribute four percent of their compensation beginning with the first pay period after 1 April 2012 to continue in the DB plan.

RELIEF

WHEREFORE, plaintiffs respectfully request that this Honorable Court:

A. Issue a judgment declaring that 2011 PA 264 is unconstitutional and of no effect as applied to class members and return to class members any monies or other benefits taken from them as a result of this legislation, together with statutory interest.

B. Issue such other relief in the form of injunctions, writs or orders, as this Court deems just and equitable.

C. Award plaintiffs their costs and expenses including, but not limited to, attorney fees incurred in pursuing this action.

Respectfully submitted,

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Dated: 13 February 2012

VERIFICATION

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

William A. Wertheimer, being first duly sworn, deposes and states he is the attorney representing plaintiffs herein; that he has read the foregoing verified complaint by him subscribed for and on behalf of plaintiffs; that he knows the contents thereof to be true except as to those matters stated upon information and believe, and as to those matters, he believes them to be true, and he is authorized to sign said verified complaint on behalf of plaintiffs.

William A. Wertheimer

Subscribed and sworn to before me this 13th day of February 2012.

KAREN ANN PURSLOW, Notary Public
County of Oakland, State of Michigan
My Commission Expires: 4-19-2014

Act No. 264
Public Acts of 2011
Approved by the Governor
December 15, 2011
Filed with the Secretary of State
December 15, 2011
EFFECTIVE DATE: December 15, 2011

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011

Introduced by Rep. Rogers

ENROLLED HOUSE BILL No. 4701

AN ACT to amend 1943 PA 240, entitled "An act to provide for a state employees' retirement system; to create a state employees' retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; to prescribe and make appropriations for the retirement system; and to prescribe penalties and provide remedies," by amending sections 1b, 1e, 20, 27, 35, 38, 47, 48, 49, 50, 55, 64, 65, 67a, 68, and 68c (MCL 38.1b, 38.1e, 38.20, 38.27, 38.35, 38.38, 38.47, 38.48, 38.49, 38.50, 38.55, 38.64, 38.65, 38.67a, 38.68, and 38.68c), sections 1b, 20, and 48 as amended by 2002 PA 93, sections 1e and 64 as amended by 2004 PA 33, sections 27 and 67a as amended by 2004 PA 109, section 35 as added and sections 38, 68, and 68c as amended by 2010 PA 185, section 47 as amended by 2002 PA 743, section 49 as amended by 2008 PA 353, sections 50 and 65 as added by 1996 PA 487, and section 55 as amended by 2010 PA 256, and by adding sections 20j, 35a, 50a, 63a, 68b, and 68e.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20j. (1) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who did not make the election under section 50a shall include only the following items of credited service, as applicable:

(a) The years and fraction of a year of credited service accrued to that member before April 1, 2012.

(b) Credit for years of service under sections 18(1) and 49(10).

(c) Service credit that was purchased before April 1, 2012.

(d) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of March 31, 2012.

(2) Beginning April 1, 2012, the calculation of a retirement allowance under this act for a member who did not make the election under section 50a shall include only the following items of compensation:

(a) Compensation received by the member before April 1, 2012.

(b) Up to 240 hours of accrued annual leave paid at separation multiplied by the hourly rate of pay for the member as of March 31, 2012, which for purposes of final average compensation shall be treated as being paid on March 31, 2012.

(3) Beginning on April 1, 2012, a member who did not make the election under section 50a shall continue to accumulate years of service credit after becoming a qualified participant in Tier 2 only as necessary for the purpose of vesting in a retirement allowance and to determine when a retirement allowance under Tier 1 may begin under this act, except as otherwise provided in section 50a(7).

(4) A member who did not make the election under section 50a shall continue to be treated as a member for purposes of Tier 1, except as otherwise provided in section 50a(7) and except for the limitations on credited service and compensation as provided in subsections (1) and (2).

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

(a) The years and fraction of a year of credited service accrued to that member on or before the attainment date.

(b) Credit for years of service under sections 18(1) and 49(10).

(c) Service credit that was purchased on or before the attainment date.

(d) Service credit that is purchased under a payment plan pursuant to this act that was in effect as of the attainment date.

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

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

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

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

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

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

Sec. 27. (1) Except as provided in subsections (3), (4), and (5), if a member dies as a result of a personal injury or disease arising out of and in the course of his or her employment with the state and the personal injury or disease resulting in death is found by the retirement board to have been the sole and exclusive result of employment with the state, the surviving spouse shall receive a retirement allowance calculated as if the deceased member had retired effective the day before the date of death, elected option A under section 31(1), and nominated his or her spouse as retirement allowance beneficiary. The retirement allowance shall be calculated under section 20(1) based upon the amount of the deceased member's credited service. If the deceased member does not have the minimum number of years of credited service needed to vest in the retirement system, the amount of service necessary to reach that amount of credited service shall be granted.

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

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

(a) One-half to the surviving spouse.

(b) One-half to the surviving child or children under 21 years of age, in equal shares. The retirement allowance payable to a surviving child under this subsection shall terminate upon that child's marriage, death, or becoming 21 years of age, whichever occurs first. That child's share of the terminated retirement allowance shall be redistributed among the remaining children under 21 years of age, if any. When there are no surviving children entitled to a share of the retirement allowance under this subsection, the children's share shall revert to the surviving spouse.

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

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

Sec. 35. (1) Beginning with the first pay date after November 1, 2010 and ending no later than the second pay date after the effective date of the amendatory act that added this phrase, each member and each qualified participant shall contribute an amount equal to 3.0% of the member's or qualified participant's compensation to the appropriate funding account established under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747. The member and qualified participant contributions shall be deducted by the employer and remitted as employer contributions to the funding account in a manner that the state budget office and the retirement system shall determine. The state budget office and the retirement system shall determine a method of deducting the contributions provided for in this section from the compensation of each member and qualified participant for each payroll and each payroll period. As used in this subsection, "funding account" means the appropriate irrevocable trust created in the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, for the deposit of funds and the payment of retirement health care benefits.

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

Sec. 35a. (1) Beginning with the first pay date after April 1, 2012 and ending upon the member's termination of employment or attainment date, as applicable under section 50a, each member who made the election under section 50a shall contribute an amount equal to 4% of his or her compensation to the employees' savings fund to provide for the amount of retirement allowance that is calculated only on the credited service and compensation received by that member after March 31, 2012. The member shall not contribute any amount under this subsection for any years of credited service accrued or compensation received before April 1, 2012.

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

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

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

Sec. 38. (1) The annual level percent of payroll contribution rate to finance the benefits provided under this act shall be determined by actuarial valuation pursuant to subsections (2) and (3), upon the basis of the risk assumptions adopted by the retirement board with approval of the department of technology, management, and budget, and in consultation with the investment counsel and the actuary. An annual actuarial valuation shall be made of the retirement system in order to determine the actuarial condition of the retirement system and the required contribution to the retirement

system. The actuary shall report to the legislature by April 15 of each year on the actuarial condition of the retirement system as of the end of the previous fiscal year and on the projections of state contributions for the next fiscal year. The actuary shall certify in the report that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used fall within the range of reasonable and prudent assumptions and cost estimates. An annual actuarial gain-loss experience study of the retirement system shall be made in order to determine the financial effect of variations of actual retirement system experience from projected experience.

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

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

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

(5) For differences occurring in fiscal years beginning on or after October 1, 1991, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual contribution rate described in subsection (4), if any, may be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year and a minimum of 25% of the remaining difference shall be submitted in the executive budget to the legislature for appropriation in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest shall be included for each year that a portion of the remaining difference is carried forward. The interest rate shall equal the actuarially assumed rate of investment return for the state fiscal year in which payment is made. This subsection does not apply for those fiscal years in which a deposit occurs pursuant to subsection (6).

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

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

Sec. 47. (1) Upon retirement as provided in section 46, a supplemental member shall be paid a temporary straight life supplemental early retirement allowance terminating upon the supplemental member reaching age 62 years or his or her death, whichever occurs first. Prior to the effective date of retirement, the supplemental member may choose to be paid his or her retirement allowance under an optional form of payment provided in section 31(1)(a). For the purposes of this election, the provisions of section 31(1)(a) are modified to reflect the temporary nature of a supplemental early retirement allowance.

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

Sec. 48. (1) A member who is a conservation officer may retire under this section if all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 49. (1) This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans and beginning January 1, 2010, applicable provisions of the final regulations issued by the internal revenue service on April 5, 2007. Employer-financed benefits provided by the retirement system under this act shall not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits, including benefits payable to retirants and retirement allowance beneficiaries, subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation shall apply to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

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

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

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

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

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993. Beginning October 1, 2010, a nonspouse beneficiary may elect to have any portion of an amount payable under this act that is an eligible rollover distribution treated as a direct rollover that will be paid in a direct trustee-to-trustee transfer to an individual retirement account or individual retirement annuity described in section 408(a) or (b) of the internal revenue code, 26 USC 408, that is established for the purpose of receiving a distribution on behalf of the beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity pursuant to section 402(c)(11) of the internal revenue code, 26 USC 402.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 31(1)(a) and (b) and 20(2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

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

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

Sec. 50. (1) Except as otherwise provided in subsection (2), the retirement system shall provide an opportunity for each member who is a member on March 30, 1997, to elect in writing to terminate membership in Tier 1 and elect to

become a qualified participant in Tier 2. An election made by a member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from members during the period beginning on January 2, 1998 and ending on April 30, 1998. A member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A member who makes and files a written election under this subsection elects to do all of the following:

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

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

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

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

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

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

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

(3) If an individual who was a deferred member on March 30, 1997 or an individual who was a former nonvested member on March 30, 1997 is reemployed before January 1, 2012 and by virtue of that employment is again eligible for membership in Tier 1, the individual shall elect in writing to remain a member of Tier 1 or to terminate membership in Tier 1 and become a qualified participant in Tier 2. An election made by a deferred member or a former nonvested member under this subsection is irrevocable. The retirement system shall accept written elections under this subsection from a deferred member or a former nonvested member during the period beginning on the date of the individual's reemployment and ending upon the expiration of 60 days after the date of that reemployment but no later than February 29, 2012. A deferred member or former nonvested member who makes and files a written election to remain a member of Tier 1 retains all rights and is subject to all conditions as a member of Tier 1 under this act. A deferred member or former nonvested member who does not make a written election or who does not file the election during the period specified in this subsection continues to be a member of Tier 1. A deferred member or former nonvested member who makes and files a written election to terminate membership in Tier 1 elects to do all of the following:

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

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

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

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

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

(6) If an individual who was a deferred member of the public school employees retirement system on March 30, 1997 is first employed and entered upon the payroll of his or her employer on or after March 31, 1997 and before January 1, 2012, the retirement system shall provide an opportunity for that individual to elect in writing to become a member of

Tier 1 or to become a qualified participant of Tier 2. The retirement system and the individual shall follow the provisions and procedures provided in this section and by the state treasurer as if the individual were a deferred member of this retirement system on March 30, 1997.

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

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

Sec. 50a. (1) The retirement system shall permit each member who is a member on December 31, 2011 to make an election with the retirement system to continue to receive credit for any future service and compensation after March 31, 2012, for purposes of a calculation of a retirement allowance under this act. A member who makes the election under this section shall make the contributions prescribed in section 35a.

(2) As part of the election under subsection (1), the retirement system shall permit the member to make a designation that the contributions prescribed in section 35a shall be paid only until the member's attainment date. A member who makes the election under subsection (1) and who makes the designation under this subsection shall make the contributions prescribed in section 35a only until the member's attainment date. A member who makes the election under subsection (1) and who does not make the designation or rescinds the designation under this subsection shall make the contributions prescribed in section 35a until termination of employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 55. (1) "Plan document" means the document that contains the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(2) "Qualified participant" means an individual who is a participant of Tier 2 and who meets 1 of the following requirements:

(a) Is first employed and entered upon the payroll of his or her employer on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) Elects to terminate membership in Tier 1 and elects to participate in Tier 2 in the manner prescribed in section 50.

(c) Is an adjutant general or an assistant adjutant general under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, and who is first employed as an adjutant general or assistant adjutant general on or after January 1, 2011.

(d) Was a member who did not make the election under section 50a.

(e) Was a member who made the election under section 50a(1) and the designation under section 50a(2) and who has attained 30 years of credited service or who has terminated employment and has been reemployed by this state.

(f) Was a member as described in section 50a(6), (7), or (8).

(3) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 66 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 67.

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

(5) "Tax-deferred account" means an account or accounts of existing deferred compensation plans or plans established by the retirement system, for which the retirement system has the authority to determine the membership, eligibility, terms, conditions, and other administrative and operational features. Tax-deferred account does not include a health reimbursement account for purposes other than complying with the contribution limits described in section 68b(12).

(6) Except as otherwise provided in this subsection, "year of service" means each period during which a qualified participant is employed by the employer and is credited with 2,080 hours of service. The Tier 2 plan administrator and the plan document may provide for a lesser number of annual hours and a maximum number of hours per pay period for any classification of employees, provided that no participant shall receive credit for more than 1 year of service for any 12-month period of employment. Beginning January 1, 2003, full service credit shall also be given to a participant for furlough hours, for required 1-day layoffs, for required and designated temporary layoffs, for a year in which a participant temporarily leaves employment to enter active military duty and then dies during that active military duty, and for participation in the banked leave time program. In the event a terminated participant is reemployed, such individual shall retain credit for all full and partial years of service completed prior to such reemployment, for purposes of determining his or her vesting percentage in any employer contributions made pursuant to section 63(2) and (3) after his or her reemployment.

Sec. 63a. Tier 2 and tax-deferred accounts are subject to the following terms and conditions:

(a) On or before April 1, 2012, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under section 63(3) or who is described in section 68b(2) elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature on or after April 1, 2012, as determined by the retirement system.

(b) In addition to elective employee contributions to Tier 2 or a tax-deferred account, the state may use elective employee contributions to the state 457 deferred compensation plan as a basis for making employer matching contributions to Tier 2 or a tax-deferred account.

(c) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(d) Elective employee contributions shall not be used as the basis for more than an equivalent amount of employer matching contributions.

(e) The retirement system shall design and implement a method to determine the proper allocation of employer matching contributions based on elective employee contributions as provided in this section.

Sec. 64. (1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2 and employer contributions under the banked leave time program. Except as otherwise provided in this section, a qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is eligible for the health insurance coverage provided in section 68 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 10 years of service as a qualified participant, was not a member, deferred member, or former nonvested member of Tier 1, was first employed and entered upon the payroll of his or her employer before January 1, 2012, and did not make an election to opt out of health insurance coverage under section 68b.

(b) The qualified participant was a member, deferred member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 50, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 20d.

Sec. 65. A qualified participant who was a member, deferred member, or former nonvested member of Tier 1 shall be credited with the years of service accrued under Tier 1 on the effective date of participation in Tier 2 for the purpose of meeting the vesting requirements for benefits under section 64.

Sec. 67a. (1) Except as otherwise provided in this section or section 33, a qualified participant who becomes totally incapacitated for duty because of a personal injury or disease shall be retired if all of the following apply:

(a) Within 1 year after the qualified participant becomes totally incapacitated or at a later date if the later date is approved by the retirement board, the qualified participant, the qualified participant's personal representative or guardian, his or her department head, or the state personnel director files an application on behalf of the member with the retirement board.

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

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

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

(2) If the retirement board grants the application of the qualified participant under subsection (1), the qualified participant shall be granted a supplemental benefit equivalent to the amount provided in section 23 as if the former qualified participant had retired under section 21, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(3) If a qualified participant dies as a result of a personal injury or disease arising out of and in the course of his or her employment with this state, or if a former qualified participant who retired under subsection (1) who dies before becoming age 60 and within 3 years after the former qualified participant's disability retirement from the same causes from which he or she separated, and such death or illness or injuries resulting in death are found by the retirement board to have been the sole and exclusive result of employment with this state, a supplemental benefit shall be granted equivalent to the amount provided for in section 27 had the former qualified participant been considered retired under section 27, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance upon becoming a former qualified participant pursuant to section 67.

(4) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a duty disability retirement allowance pursuant to subsection (1), (2), or (3), is eligible for health insurance coverage under section 20d in all respects and under the same terms as would be a retirant and his or her beneficiaries under Tier 1.

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

(a) Within 1 year after the qualified participant becomes totally incapacitated or at a later date if the later date is approved by the retirement board, the qualified participant, the qualified participant's personal representative or guardian, the qualified participant's department head, or the state personnel director files an application on behalf of the qualified participant with the retirement board.

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

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

(6) If the retirement board grants the application of the qualified participant under subsection (5), the qualified participant shall be granted a supplemental benefit equivalent to the amount provided for in section 25 as if the qualified participant had retired under section 24. The supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(7) Except as otherwise provided in this section, if a qualified participant who has been a state employee for the number of years necessary to vest under Tier 1 dies as a result of causes occurring not in the performance of duty to this state, a supplemental benefit shall be granted equivalent to the amount provided for in section 25 had the former qualified participant been considered retired under section 24, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(8) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a disability retirement allowance pursuant to subsection (5), (6), or (7) is eligible for health insurance coverage under section 20d in all respects and under the same terms as would be a retirant and his or her beneficiaries under Tier 1.

(9) This section does not apply to a qualified participant or former qualified participant who was a member who meets the requirements of section 55(2)(d), (e), or (f).

(10) Subsections (4) and (8) do not apply to a qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012.

Sec. 68. (1) A former qualified participant may elect health insurance benefits in the manner prescribed in this section if he or she meets both of the following requirements:

(a) The former qualified participant is eligible for health benefits under section 64(2).

(b) The former qualified participant meets or exceeds the benefit commencement age employed in the actuarial present value calculation under section 51 and the service requirements that would have applied to that former qualified participant under Tier 1 for receiving health insurance coverage under section 20d, if that former qualified participant was a member of Tier 1.

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 20d. A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may also elect health insurance coverage for his or her health benefit dependents, if any. A surviving health benefit dependent of a deceased former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in the manner prescribed in this section.

(3) An individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 20d.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is eligible for those benefits under section 64(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. For a former qualified participant who commenced state employment before April 1, 2010 and for his or her health benefit dependents, the portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the product of 3% and the former qualified participant's years of service, up to 30 years, but shall not exceed the lesser of 90% of the payments for health insurance coverage or the portion of the health insurance coverage premiums payable by this state for a retirant, his or her beneficiary, and his or her dependents under section 20d. If the individual elects the health insurance coverage provided under section 20d, the state shall transfer its portion of the amount calculated under this subsection to the health insurance reserve fund created by section 11. For a former qualified participant who commenced state employment on or after April 1, 2010 and for his or her health benefit dependents, the portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the product of 3% and the former qualified participant's years of service, up to 30 years, but shall not exceed the lesser of the portion of the health insurance coverage premiums payable by this state for a retirant, his or her beneficiary, and his or her dependents under section 20d or the portion of the health insurance coverage premiums payable by this state for a member who occupies a position in the classified state civil service or has classified civil service status commencing state employment on or after April 1, 2010.

(5) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is eligible for those benefits under section 64(2)(b), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. The portion of the health insurance coverage premium paid by this state under this subsection shall be equal to the premium amounts paid on behalf of retirants of Tier 1 for health insurance coverage under section 20d. If the individual elects the health insurance coverage provided under section 20d, the state shall transfer its portion of the amount calculated under this subsection to the health insurance reserve fund created by section 11.

(6) Beginning January 1, 2011, any former qualified participant or health benefit dependent who is eligible to elect health insurance coverage under this section and who previously elected coverage under a different plan than the plan authorized under section 20d may either elect coverage under this section or may at his or her own cost participate in coverage under a different plan than the plan authorized under section 20d.

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

(8) As used in this section, "health insurance coverage" means the hospitalization and medical insurance, dental coverage, vision coverage, and any other health care insurance provided in section 20d.

(9) Subsections (1) to (8) do not apply to a qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made the election to opt out of health insurance coverage under section 68b.

(10) A former qualified participant may enroll in the same retiree health care plan offered by this state and available to former qualified participants who commenced state employment on or after April 1, 2010, if he or she meets all of the following requirements:

(a) The former qualified participant made the election to opt out of health insurance coverage under section 68b or was first employed and entered on the payroll of his or her employer on or after January 1, 2012.

(b) The former qualified participant meets or exceeds the benefit commencement age as set forth in section 51(3)(b)(*iii*).

(c) The former qualified participant enrolls immediately on termination.

(d) The former qualified participant has not previously disenrolled from the plan.

(e) The former qualified participant pays the total cost of the plan.

Sec. 68b. (1) A qualified participant or former qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6) shall not receive any health insurance coverage premium from this state under section 68. In lieu of any health insurance coverage premium that might have been paid by this state under section 68, a qualified participant's employer shall make a matching contribution up to 2% of the qualified participant's compensation to an appropriate tax-deferred account for each qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6). A matching contribution under this subsection shall not be used as the basis for a loan from an employee's Tier 2 or tax-deferred account.

(2) A qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012 or who made an election under subsection (5) or (6) may make a contribution up to 2% of the qualified participant's compensation to an appropriate tax-deferred account.

(3) Except as otherwise provided in this subsection, a qualified participant is vested in contributions made to his or her tax-deferred account under subsections (1) and (2) according to the vesting provisions under section 64(1). A qualified participant who is eligible for health insurance coverage under section 67a(4) or (8) is not vested in any employer contributions under subsection (1) and forfeits the contributions and earnings on the contributions.

(4) The contributions described in this section shall begin with the first payday after the qualified participant is employed or on or after April 1, 2012 for a qualified participant who makes an election under subsection (5) or (6) and end upon his or her termination of employment.

(5) Except as otherwise provided in this subsection, beginning January 3, 2012 and ending at 5 p.m. eastern standard time on March 2, 2012, the retirement system shall permit each qualified participant who is a qualified participant on December 31, 2011 to make an election to opt out of the health insurance coverage premium that would have been paid by this state under section 68 and opt in to the tax-deferred account provisions of this section effective April 1, 2012. A qualified participant who is a qualified participant on December 31, 2011 and who does not make the election under this subsection continues to be eligible for the health insurance coverage premium paid by this state under section 68 and is not eligible for the tax-deferred account provisions of this section. A qualified participant who is a qualified participant on December 31, 2011 and who makes the election under this subsection shall cease accruing years of service credit for purposes of calculating a portion of the health insurance coverage premium that would have been paid by this state under section 68 as if that section continued to apply and for the portion of the amount to be calculated under subsection (7) for crediting to a tax-deferred account. This subsection does not apply to any of the following:

(a) A former member who made an election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(d) A former qualified participant who was a former qualified participant on December 31, 2011.

(6) Except as otherwise provided in this subsection, a former qualified participant who has 10 or more years of service on or before December 31, 2011 and who is reemployed by this state on or after January 1, 2012 and before January 1, 2014 may make an election under this subsection and receive an amount, if any, as determined under this section. Beginning on the date of the former qualified participant's reemployment and ending 60 days after the former qualified participant's first pay date, the retirement system shall permit the former qualified participant to make an election to opt out of the health insurance coverage premium that would have been paid by this state under section 68 and opt in to the tax-deferred account provisions of this section effective on or after the former qualified participant's date of reemployment. If the former qualified participant does not make the election under this subsection, he or she continues to be eligible for the health insurance coverage premium paid by this state under section 68 and is not eligible for the tax-deferred account provisions of this section. A former qualified participant who makes the election under this subsection ceases to accrue years of service credit for purposes of calculating a portion of the health insurance coverage premium that would have been paid by this state under section 68 as if that section continued to apply and for purposes of calculating the portion of the amount to be credited to a tax-deferred account under subsection (7). This subsection does not apply to any of the following:

(a) A former member who made an election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(7) Except as otherwise provided in this section, in lieu of any health insurance coverage premium that might have been paid by this state under section 68, the retirement system shall calculate an amount to be credited at termination to an appropriate tax-deferred account for each qualified participant who makes an election under subsection (5) or (6). The amount described in this subsection shall be an amount calculated to approximate the actuarial present value as of 12 midnight March 31, 2012 of the projected retirant health benefits based on the current benefit structure under section 68 and the qualified participant's years of service as of March 31, 2012. The amount calculated under this subsection shall be equal to the product of all of the following as determined by the retirement system in consultation with the actuary for the system:

(a) An average monthly premium of $1,000.00, payable for the life of the qualified participant, which approximates the overall average value of all types of premium coverages for single and multiple lives during both pre-medicare and post-medicare periods.

(b) A frozen benefit accrual percent that is the product of 3% and the qualified participant's years of service as of March 31, 2012, up to 30 years.

(c) A deferred life annuity factor equal to the actuarial present value as of March 31, 2012 of $1.00 per month payable for the life of the qualified participant, based on the following actuarial assumptions:

(*i*) An interest discount rate of 4% annually for all future years, which approximates the use of an assumed rate of investment return or interest discount rate of 8%, combined with an assumption that the average premium is projected to increase 4% annually for all future years.

(*ii*) Mortality rates based on a 50% male - 50% female blend of the 1994 group annuity mortality table set forward 1 year for both males and females.

(*iii*) Commencement of the $1.00 per month deferred life annuity based on an assumption that the qualified participant will terminate employment upon reaching age 60 and that the qualified participant would have received health insurance coverage immediately upon termination of employment.

(8) The amount calculated under subsection (7) shall be adjusted annually from March 31, 2012 to the date of the qualified participant's actual termination of employment. Except as otherwise provided in this subsection, the retirement system shall establish the amount of the annual adjustment to be equal to the change in the medical care component of the United States consumer price index for the most recent 12-month period for which data are available from the bureau of labor statistics of the United States department of labor. The adjustment under this subsection shall not be less than 0% and shall not be more than 4%.

(9) The amount calculated under subsection (7) and adjusted under subsection (8) shall be credited at the qualified participant's first termination of employment following December 31, 2011, to the qualified participant's tax–deferred account according to the following schedule:

(a) One hundred percent of the calculated amount to a qualified participant who is at least 60 years of age with at least 10 years of service or is at least 55 years of age with at least 30 years of service.

(b) Fifty percent of the calculated amount to a qualified participant who has at least 10 years of service and who does not meet the age and service qualifications of subdivision (a).

(10) An individual who is a former qualified participant on December 31, 2011, who has 10 or more years of service on or before December 31, 2011, and who is reemployed by this state on or after January 1, 2014 shall be treated in the same manner as a qualified participant under this section who made the election under subsection (5) and shall receive an amount, if any, as determined under this section. This subsection does not apply to any of the following:

(a) A former member who made the election to become a qualified participant under section 50.

(b) A member who did not make the election under section 50a.

(c) A member who made the election under section 50a(1) and the designation under section 50a(2), who has attained 30 years of credited service, and who remains employed by this state.

(11) In lieu of any other health insurance coverage that might have been paid by this state, a credit to a health reimbursement account within the trust created under the public employee retirement health care funding act, 2010 PA 77, MCL 38.2731 to 38.2747, shall be made by this state in the amounts and to the qualified participants or former qualified participants as follows:

(a) Two thousand dollars to a qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment.

(b) One thousand dollars to a qualified participant who was first employed and entered upon the payroll of his or her employer on or after January 1, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment.

(c) Two thousand dollars to a former qualified participant who has less than 10 years of service as of December 31, 2011, who is reemployed by this state on or after January 1, 2012, who is 60 years of age or older, and who has at least 10 years of service at his or her first termination of employment following December 31, 2011. This subdivision does not apply to an individual described in subsection (10)(a), (b), or (c).

(d) One thousand dollars to a former qualified participant who has less than 10 years of service as of December 31, 2011, who is reemployed by this state on or after January 1, 2012, who is less than 60 years of age, and who has at least 10 years of service at his or her first termination of employment following December 31, 2011. This subdivision does not apply to an individual described in subsection (10)(a), (b), or (c).

(e) Two thousand dollars shall be the minimum amount credited to a qualified participant who made an election under subsection (5) and who does not otherwise qualify for an amount or qualifies for a lesser amount under this subsection at his or her first termination of employment after December 31, 2011.

(12) The retirement system shall determine a method to implement subsections (5) to (11), including a method for crediting the amounts in subsection (9) to comply with any contribution limits imposed by the internal revenue code, including, but not limited to, crediting of payments before termination of employment.

(13) Subsections (5) to (11) do not apply to a qualified participant who is eligible for health insurance coverage under section 67a(4) or (8).

(14) On or before January 1, 2017, the retirement system shall provide a report to the chair of the house and senate appropriations committees that provides the projected impact of subsection (11) as it applies to qualified participants entered upon the payroll of this state on or after January 1, 2017 with regard to the annual required contribution as used by the governmental accounting standards board and for purposes of the annual financial statements prepared under section 12(1).

Sec. 68c. (1) Except as otherwise provided in this section, a retirant who is receiving a retirement allowance under this act and is employed by this state beginning on or after October 2, 2007 agrees to forfeit his or her right to receive that retirement allowance during this period of state employment. The retirement system shall cease payment of the retirement allowance to a retirant described in this subsection during this period of state employment and shall reinstate payment of the retirement allowance without recalculation when the period of state employment ceases. This subsection does not apply to a retirant who is directly or indirectly employed by this state on October 1, 2007 so long as he or she remains in the position held by the retirant on October 1, 2007. As used in this subsection, "employed by this state" means employed directly by this state as an employee, indirectly by this state through a contractual arrangement with other parties, or by engagement of the retirant by this state as an independent contractor. This subsection does not apply to a retirant who is engaged as an independent contractor on October 1, 2010 so long as the retirant remains engaged in the same contract that was held by the retirant on October 1, 2010 without amendment or extension.

(2) A hospital, medical-surgical, and sick care benefits plan, dental plan, vision plan, and hearing plan that covers retirants, retirant allowance beneficiaries, former qualified participants, and health benefit dependents under this act shall contain a coordination of benefits provision that provides all of the following:

(a) If the person covered under any of the plans is also eligible for medicare, then the benefits under medicare shall be determined before the health insurance benefits under this act.

(b) If a person covered under any of the plans provided by this act is also covered under another plan that contains a coordination of benefits provision, the benefits shall be coordinated as provided in the coordination of benefits act, 1984 PA 64, MCL 550.251 to 550.255.

(c) If the person covered under any of the plans provided by this act is also covered under another plan that does not contain a coordination of benefits provision, the benefits under the other plan shall be determined before the benefits provided pursuant to this act.

(3) Subsection (1) does not apply to a retirant if all of the following apply:

(a) The retirant is hired to provide health care services to individuals under the jurisdiction of the department of corrections.

(b) The retirant is hired in a position that is limited in term, no benefits are paid, and pay is on a per diem basis.

(c) The department of corrections provides written notice to the state budget office and the department of technology, management, and budget that attempts have been made to fill the position through postings and recruitment and that the position vacancy still exists.

(d) The department of corrections reports the employment of a retirant under this subsection within 30 days of employment of the retirant to the state budget office and the department of technology, management, and budget. The report shall include the name of the retirant, the capacity in which the retirant is employed, and the total compensation paid to the retirant.

(4) Subsection (1) does not apply to the appointment of a retirant who was an assistant attorney general as a special assistant attorney general if the attorney general determines that, as a result of his or her previous employment with the state, the retirant possesses specialized expertise and experience necessary for the appointment and that the appointment is the most cost-effective option for this state.

Sec. 68e. (1) There is appropriated for the fiscal year ending September 30, 2012 $1,900,000.00 to the office of retirement services in the department of technology, management, and budget for administration of the changes under the amendatory act that added this section.

(2) The appropriation authorized under subsection (1) is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to administer changes under the amendatory act that added this section.

(b) The work project will be accomplished through a plan utilizing interagency agreements, employees, and contracts.

(c) The total estimated completion cost of the work project is $1,900,000.00.

(d) The estimated completion date for the work project is September 30, 2013.

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

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4702 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Gary L Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved .....

.....

Governor

Legislative Analysis

Mary Ann Cleary, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

STATE EMPLOYEE RETIREMENT REVISIONS

House Bill 4701 as Enacted
Public Act 264 of 2011
Sponsor: Rep. Bill Rogers

House Bill 4702 as Enacted
Public Act 265 of 2011
Sponsor: Rep. Chuck Moss

House Committee: Appropriations
Senate Committee: Appropriations

Complete to 12-15-11

A SUMMARY OF HOUSE BILLS 4701 AND 4702 AS ENACTED

The bills would amend the State Employees' Retirement Act and the Public Employee Retirement Health Care Funding Act to make the following changes to State Employees' Retirement System (SERS) benefits:

- Eliminate the 3% employee contribution for retiree health care required of all employees since 2010 and refund contributions to employees.

- Require employees in the SERS pension, or defined benefit (DB), plan to choose between remaining in the plan and contributing 4% of their compensation toward the plan or freezing their pension benefit and continuing their future service under the SERS 401(k), or defined contribution (DC), plan.

- Eliminate retiree health insurance for employees hired on or after January 1, 2012, and replace it with a 401(k) or 457 plan employer match option of up to 2% of compensation plus a lump sum deposit of either $1,000 or $2,000 into a Health Reimbursement Account (HRA) upon termination of employment.

- Provide existing DC plan employees (hired between March 31, 1997 and December 31, 2011) the option of retaining the current retirement graded premium health insurance plan or switching to the 401(k) or 457 plan employer match option of up to 2% of compensation. Employees who chose to switch plans would receive a lump sum contribution into either their 401(k) or 457 plan upon separation from the State in lieu of the retiree health insurance benefits they had already earned based on current service. The lump sum amount would be calculated as described in detail below.

- Allow employees who receive the 2% employer matching contribution in lieu of health benefits to purchase health care coverage from the State's health care plans upon retirement or separation from the state.
- Prohibit employees from borrowing the employer matching contribution for retiree health care deposited in their tax-deferred accounts.

- Maintains overtime pay in compensation for the purposes of calculating an employee's pension, but beginning January 1, 2012, would use a 6-year average of overtime pay, rather than a 3-year average used for other compensation.

- Revise current DC matching provisions to create an automatic enrollment for employee contributions up to the state matching provisions and allow the state to match employee contributions into a 457 plan as well as the current 401(k) plans.

- Establish HRAs for employees within the irrevocable health care trusts established in 2010 to receive and hold employer and employee contributions for retiree health benefits or reimbursement of medical expenses.

The bills are tie-barred to each other so that neither could go into effect unless the other were also enacted into law. A detailed description of each bill follows, and a fiscal analysis of the bills begins on page 7.

House Bill 4701

House Bill 4701 would amend the State Employees' Retirement Act (MCL 38.1 et al.) to make the following changes to SERS benefits:

Eliminate Mandatory 3% Employee Contribution for Retiree Health Care

PA 185 of 2010 required that beginning in November 2010, all employees in SERS contribute 3% of their compensation into an irrevocable trust for retiree health care costs. The employee contributions are currently being held in an escrow account pursuant to *AFSCME, et al. vs Michigan State Employees' Retirement System, et al.* while the legality of the mandatory contributions is litigated. House Bill 4701 would stop these contributions no later than the second pay period following the enacting date of the bill, and would refund the contributions to employees with any actual interest earned on those contributions on or before the first pay date after April 1, 2012. Employees would be allowed to choose whether they receive their refund in a lump sum payment in their paycheck or as a tax-deferred contribution into either their 401(k) or 457 plan.

Require 4% Employee Contribution to Remain in Defined Benefit (DB) Pension Plan

House Bill 4701 would require that employees currently in the DB pension plan choose between contributing 4% of compensation toward pension costs beginning April 1, 2012, and remaining in that plan or freezing the service they have earned in the pension plan and converting to the DC 401(k) plan for future service.

Employees could elect to contribute 4% and remain in the DB pension plan until retirement or could designate that the 4% contribution would continue only until their attainment date, which the bill would define as the final day of the pay period in which they reach 30 years of service, at which point their pension benefit would be frozen and they would transition into the DC 401(k) plan for any additional service. Employees who are employed as of December 31, 2011, would have to make the election during the specified period of January 3, 2012, through March 2, 2012, including the designation of the 4% percent contribution as permanent or continuing only until their attainment date. Elections and designations could be rescinded until March 2, 2012. Contributions would be made through pre-tax payroll deductions.

Employees who elect to make the contribution, but designate that it would end on their attainment date, would have their service and compensation, for the purposes of calculating their pension, frozen as of their attainment date and would become a qualified participant in the DC 401(k) plan as of the day after their attainment date. Credited service would include service accrued as of their attainment date, applicable military service credit, service credit purchased as of their attainment date, and service credit purchased under a payment plan that is in effect as of their attainment date.

Compensation for the purposes of calculating the pension for an employee who elects to make the contribution and makes this designation would include compensation received as of their attainment date as well as 240 hours of accrued annual leave paid at separation multiplied by the hourly rate of pay for the member on their attainment date, which for the purposes of calculating a final average compensation, would be treated as having been paid on their attainment date.

Employees who do NOT elect to make the contribution would have their service and compensation, for the purposes of calculating their pension, frozen as of March 31, 2012, and would become a qualified participant in the DC 401(k) plan as of April 1, 2012. Credited service would include service accrued prior to April 1, 2012, applicable military service credit, service credit purchased prior to April 1, 2012, and service credit purchased under a payment plan that is in effect as of March 31, 2012. Compensation for the purposes of calculating the pension for an employee who elects not to make the contribution would include compensation received prior to April 1, 2012, as well as 240 hours of accrued annual leave paid at separation multiplied by the hourly rate of pay for the member on March 31, 2012, which for the purposes of calculating a final average compensation, would be treated as having been paid on March 31, 2012.

For both groups of employees who transfer into the DC 401(k) plan, either as of April 1, 2012, or as of their attainment date, their years of service would be used toward the 401(k) vesting schedule. They would be vested immediately in their own contributions and would be 100% vested in employer contributions as long as they had accrued more than 4 years of service, which is likely to include all employees in the DB pension plan.

For certain employees who are not currently employed by the State, the impact would be as follows:

- *A former employee, who is vested in the DB pension plan*, and returns to State employment on or after January 1, 2012, would be treated like an employee who did not elect to make the contribution and would have their former service and compensation frozen and would become a DC 401(k) participant for future service.

- *A former non-vested employee* who returns to State employment on or after January 1, 2012 but before January 1, 2014, would be treated like an employee who did not elect to make the contribution and would have their former service and compensation frozen and would become a DC 401(k) participant for future service. If a former non-vested employee returned to employment on or after January 1, 2014, he or she would not be a member of the DB pension plan and would be treated as having been first employed as of his or her date of reemployment and would therefore be in the DC 401(k) plan.

- *A former employee in the Michigan Public School Employees Retirement System* (MPSERS) who begins employment with the State on or after January 1, 2012, would be in the DC 401(k) plan.

Defined Contribution (DC) Health Care Revisions

Currently employees in the DC 401(k) who were hired on or after March 31, 1997, vest into a graded premium health insurance benefit after completing 10 years of service. They earn an employer contribution of 3% of the insurance premium for the health care insurance provided by SERS for each year of service completed, up to a maximum of 90% after 30 years. Employees become eligible to elect health insurance coverage after they reach age 55 if they have 30 years of service or age 60 if they have 10 years of service. Employees are not currently required to be working for the State immediately prior to retiring in order to receive an earned benefit.

For employees hired on or after January 1, 2012, House Bill 4701 would eliminate retiree health insurance coverage and would replace it with an employer matching contribution of up to 2% of compensation into either a 401(k) or 457 plan. Employees would be immediately vested in their personal contributions and would be vested in the employer contributions based on the same vesting schedule for the current DC 401(k) plan: 50% upon 2 years of service, 75% upon 3 years of service and 100% upon 4 years of service.

In addition, these employees would receive a lump sum deposited into a Health Reimbursement Account (HRA) upon termination of employment. The lump sum would equal $1,000 for an employee who terminates employment prior to reaching age 60 and ten years of service or $2,000 for an employee who terminates employment after reaching age 60 with ten years of service. By January 1, 2017, the bill would require ORS to report to the Legislature on the impact of the lump sum payments in regard to the calculation of the state's annual required contributions for retiree health care as used by the Governmental Accounting Standards Board.

Employees hired on or after March 31, 1997, but before January 1, 2012, would have the option of either retaining their current retirement health care insurance benefit upon retirement or switching to the new employer matching contribution of up to 2% of compensation into a 401(k) or 457 plan. Current employees who choose the 2% employer matching contribution would have their currently earned retiree health insurance graded premium benefit converted into a monetized lump sum, which would be deposited into a 401(k), 457, or other eligible tax-deferred plan upon separation from the State as follows:

- An employee would receive 100% of the monetized amount if they terminate employment after the date they would have otherwise been eligible to receive health benefits under the current benefit structure.
- If an employee terminates employment prior to that date, but has at least 10 years of service, the employee would receive 50% of the monetized amount.
- If an employee terminates employment before earning 10 years of service, the employee forfeits the monetized amount.

House Bill 4701 would calculate the monetized lump sum based on the following formula to approximate the actuarial present value as of March 31, 2012, of the projected retiree health benefit based on the current benefit structure and the employee's years of service as of March 31, 2012. The amount would be equal to the product of an average monthly premium of $1,000 payable for the life of the employee times the frozen employer premium share percentage (equal to 3% times the number of years of service) times a deferred life annuity factor (equal to the present value as of March 31, 2012, of $1.00 per month payable for the life of the employee). The deferred life annuity factor is based on the following actuarial assumptions:

- An interest discount rate of 4% annually, which approximates the use of an assumed investment rate of return of 8% combined with an assumed annual growth rate for average premium costs of 4%.
- Mortality rates based on 50% Male - 50% Female blend of the 1994 group mortality table.
- Commencement of the deferred life annuity based on an employee terminating employment at age 60 and otherwise would have begun receiving health benefits immediately upon termination of employment.

The monetized amount calculated above would be increased annually at a rate equal to the change in the medical care component of the consumer price index (CPI) from each year to the next, but the rate would not be less than 0% nor would it exceed 4%.

See the Appendix for examples of what the monetized amount would equate to for various employees.

Former employees who return to employment after January 1, 2012 would be treated as follows for the purposes of retiree health care:

- DB with more than 10 years of service prior to first separation -- No change.
- DB with less than 10 years of service prior to first separation -- Treated like new employees hired after January 1, 2012.
- DC with more than 10 years of service prior to first separation -- Given the same option as current DC employees with more than 10 year of service if reemployed prior to January 1, 2014, but treated like an existing DC employee who opted out of retiree health insurance and into the 2% matching contribution if they return after January 1, 2014.
- DC with less than 10 years of service prior to first separation -- Treated like new employees hired after January 1, 2012.

Average Overtime Compensation Over 6 Years

House Bill 4701 would change the definition of compensation for the purposes of calculating a pension allowance and the purposes of employee contributions toward the pension to average overtime pay over 6 years rather than using a 3-year average as is done for other compensation earned beginning January 1, 2012. For the first three years, this would be phased such that the overtime average compensation period would increase by one month at a time until January 1, 2015 when the full 6-year average is reached. This could reduce future pension allowances for employees who perform significant overtime service, but would reduce the incentive for an employee to work excessive overtime in years immediately preceding retirement in order to "spike" pension benefits.

Additional Matching Contribution Plan Revisions

The bill would require that the Office of Retirement Services create an automatic enrollment system to automatically deduct the full amount of the match provision in both the current DC 401(k) plan provision as well as the new 2% matching contribution in lieu of retiree health care. The system would begin on or after April 1, 2012, but employees would be allowed to opt out or revise their contribution amounts at any time.

The bill would also allow the State to use an employee's elective contributions into a 457 plan as a basis for making employer matching contributions for the current DC 401(k) plan or other matching contributions into a tax-deferred account. Currently only employee contributions into a 401(k) plan are eligible for the employer matching contribution. It would also clarify that the employer matching contributions do not have to be made into the same account as the employee contributions that were used as the basis for the match.

Employer matching contributions provided in lieu of retiree health care could not be used as a basis for a loan from an employee's tax-deferred account.

Employees receiving matching contributions in lieu of retiree health care would have the option of purchasing a retiree health plan from the state's health plan if they immediately enroll upon retirement or separation from the state.

House Bill 4702

House Bill 4702 would amend the Public Employee Retirement Health Care Funding Act (MCL 38.2731 et al.) to create individual health reimbursement accounts (HRAs) within the irrevocable health care trusts created under PA 77 of 2010. The HRAs would hold the $1,000 to $2,000 lump sum payments toward retiree health care costs as calculated and provided upon termination of employment for new employees after January 1, 2012 under House Bill 4701.

Additional employer contributions and any future mandatory employee contributions as required by each applicable retirement act could also be deposited in the HRAs. Currently, voluntary employee contributions are not permitted for deposit into an HRA due to its tax-exempt status; however, House Bill 4702 would allow voluntary employee contributions to be deposited into an HRA if they are determined to be permitted by both state and federal laws in the future.

Funds deposited into an HRA for the benefit of a former employee could be used for the reimbursement of medical expenses after retirement for the former employee or their dependents. House Bill 4702 defines an eligible medical expense as an expense that otherwise would qualify under Section 213(d) of the Internal Revenue Code and is not reimbursed by any other source.

FISCAL IMPACT:

House Bill 4701 would create both quantifiable short-term savings as well as long-term savings, which cannot be precisely quantified, for the state due to various provisions of the bill, which are described in more detail below.

Eliminate Mandatory 3% Employee Contribution for Retiree Health Care

The requirement of an employee contribution of 3% of compensation toward retiree health care costs under PA 185 of 2010 was intended to reduce the current state costs for providing these benefits. At the time, the 3% employee contribution was expected to generate approximately $75 million Gross ($30 million GF/GP) in savings in FY 2010-11 and nearly $82 million Gross ($33 million GF/GP) annually for FYs 2011-12 and 2012-13. The elimination of the 3% contribution would eliminate these savings; however, the state is not currently realizing those savings because of the injunction in *AFSCME, et al. vs Michigan State Employees Retirement System, et al.*

Require 4% Employee Contribution to Remain in DB Pension Plan

If 100% of the current employees in the DB pension plan choose to remain in the DB pension plan and contribute 4% of their compensation toward pension costs, it would save the state approximately $56 million Gross ($28 million GF/GP) for the first full year. However, since the implementation date for this proposal would now be April 1, 2012, with just half the fiscal year remaining, the savings for FY 2011-12 would be about half of that figure or $28 million Gross ($14 million GF/GP).

The annual savings would diminish each year as the proportion of state employees in the DB pension plan decreases. The Office of Retirement Service (ORS) estimates that it would save the state between $300 million and $350 million cumulatively over the next 15-20 years until the point at which there are no longer any active employees in the DB pension plan.

To the extent that some employees choose not to pay the 4% and instead freeze their pension benefits and move into the DC 401(k) plan for future service, the state may not realize the full potential savings from the 4% employee contribution in the near term but would experience long-term savings as future pension obligations would decrease.

Defined Contribution (DC) Plan Health Care Revisions

House Bill 4701 would create an indeterminate amount of future savings for the state related to future retiree health care obligations by doing the following:

- Eliminating the retiree health insurance premium coverage currently provided to employees in the DC 401(k) plan, who are hired on or after January 1, 2012, and replacing the benefit with a 2% employer matching contribution into a 401(k) or 457 plan.

- Allowing employees in the DC 401(k) plan, who were hired between March 31, 1997, and December 31, 2011, to opt out of retiree health insurance and into the new 2% employer matching contribution being provided to new employees. The graded premium insurance benefit already earned by each employee would be converted into a monetized lump sum payment to be deposited into a 401(k) or 457 plan upon separation from the state. The growth of the present value of that payment would be capped at the medical care component of the Consumer Price Index (CPI) or 4%, whichever is less.

For the most part the state would not begin to realize these savings for at least 15 years until a substantial number of employees in the graded premium health insurance, who currently have a maximum of 14 years of service, begin to reach retirement age, and savings would depend on the number of existing employees who chose to forego retiree health insurance in exchange for the monetized lump sum plus 2% employer matching contribution. The plan would save the state significantly in the long term by avoiding increasing unfunded liabilities by eliminating retiree health insurance for all new employees hired after January 1, 2012.

However, the changes above would have an immediate fiscal impact for the state related to a recent change in the anticipated funding method for retiree health care:

> As background, until FY 2011-12 the state had been funding retiree health care on a pay-as-you-go basis rather than prefunding future retiree health obligations. The Governor and Legislature have agreed, as part of the budget agreement for FY 2011-12, to begin prefunding the future retiree health care liabilities in FY 2011-12 in

order to reduce future unfunded liabilities. At the time the budget was adopted, the State Budget Office had estimated this would require an increased payment of $280 million, in addition to the $420 million appropriated in FY 2010-11 for retiree health care, or a total of $700 million, based on the September 30, 2009, SERS valuation. However, since the budget adoption, the September 30, 2010, SERS valuation has been published, and instead, it requires a total annual payment for FY 2011-12 of $743 million. This is the minimum amount necessary to meet the Annual Required Contribution (ARC) that will trigger the change in the accounting method used to determine future unfunded liabilities. The change in accounting method allowed by the budget agreement to begin prefunding will reduce the future unfunded liabilities from $14.7 billion to $9.1 billion.

The changes proposed for retiree health care in House Bill 4701 may slightly reduce the amount required for the pre-funding payment, pegged at $743 million for FY 2011-12 to somewhere between $713 million and $743 million depending on the number of current employees who choose to forgo retiree health insurance benefits. Over the next 40 years, initial ORS estimates suggest that the plan would save nearly $5.8 billion cumulatively. However, the ORS does not yet have a final actuarial estimate of the changes as proposed in House Bill 4701 (S-1). The estimates above include both Federal and State fund sources; the impact related to the General Fund is likely to be half of any total savings.

Unfunded Accrued Liability Employer Contribution Rate

House Bill 4701 would revise the payment schedule for the unfunded accrued liability (UAL) associated with SERS retirement benefits, which is currently based on and applied to just the DB portion of payroll for each state department, in order to spread the UAL over both DB and DC portions of payroll. This would solve the issue of how to charge departments for retirement contributions created by the bill once some employees are in both the DB plan at a frozen level for past service and the DC plan for current service. Now that the DB proportion of all employees is less than half of the total, this would also serve to lower the UAL contribution rate by applying it to the entire state payroll and applying it across all departments equally. Currently departments that have a disproportionately higher share of high seniority staff in the DB plan experience higher retirement costs than departments with more employees in the DC plan. This would not have an overall fiscal impact on the state but would change the distribution of retirement costs among state departments.

Overtime Compensation

Averaging overtime compensation over a 6-year period for pension allowances would likely reduce future pension allowances and decrease state pension costs long term. However, the ORS does not have a current estimate of state savings related to this provision.

Other Matching Contribution Revisions

Currently, of the employer 3% matching contribution in the DC 401(k) plan, state employees, on average, contribute just 2.2% of compensation, thus foregoing the remaining 0.8 percentage points of employer matching contributions. Creating an automatic

enrollment system could encourage state employees to take advantage of a larger share of the 3% employer match.

Additionally, some employees forgo some of the state match by opting to contribute into to a 457 plan instead of a 401(k) plan. Thus, also allowing the state to use employee contributions into a 457 plan as a basis for the 3% matching contribution would increase the state's required matching contribution. If these two provisions increase the state's actual match to the full allowable 3%, the increased annual cost, holding all else constant, would be approximately $11 million.

Office of Retirement Services Appropriation

House Bill 4701 would also appropriate $1.9 million for FY 2011-12 for the Office of Retirement Services in the Department of Technology, Management and Budget to administer the changes proposed in the bill. The appropriation would be considered a work project and ORS could carry the funding into FY 2012-13 to complete related work.

Fiscal Analyst: Bethany Wicksall

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent

APPENDIX

House Bill 4701 as Enacted
State Employees' Retirement System - DC Retiree Health Benefit Monetization

Examples for Illustration Purposes

Case	Current Age	Current Service	Frozen Accrual Percent	Normal Retirement Age (NRA)[1]	Lump Sum Present Value In 2011[2]	Lump Sum at NRA If Still Employed [2] 4% Interest Credit [3]
A	25	5	15%	55	$8,506	$27,588
B	35	5	15%	60	$9,089	$24,230
C	35	13	39%	55	$32,928	$72,149
D	45	5	15%	60	$13,582	$24,460
E	45	13	39%	60	$35,312	$63,595
F	55	5	15%	60	$20,556	$25,010
G	55	13	39%	60	$53,445	$65,024
H	60	5	15%	65	$17,619	$21,436
I	60	13	39%	60	$66,642	$66,642

[1]Future service is used to determine the normal retirement age. Normal retirement age for all members is the earlier of age 55 with 30 years of service, or age 60 with 10 years of service. Special retirement conditions for Corrections Officers and Conservation Officers are not considered.

[2]Lump sum is available upon separation from the State at 50% if separating prior to normal retirement age or 100% at normal retirement age, but the table assumes employment with the State until normal retirement age.

[3]Lump sum at normal retirement age depends on actual annual interest credits, which will equal the annual increases in the medical care component of the Consumer Price Index, with a minimum annual credit of 0% and a maximum annual credit of 4%. The maximum annual 4% interest credit is shown in the examples above.

Notes:

1. The monthly single life premium at normal retirement age is assumed to be $1,000. The interest discount for all future years is 4% per year (designed to reflect an assumed 8% investment rate of return and a 4% health insurance premium increase assumption).
2. The mortality table used is a 50% - 50% Male/Female blend of the 1994 Group Annuity Mortality Table set forward 1 year for both males and females.

State Employees Retirement System Retiree Health Care Compromise Proposal
12/15/11 - SUMMARY: HB 4701 as Enacted

Employee Group	Current Benefit	HB 4701
Employees hired prior to March 31, 1997 who stayed in DB/Pension Plan	Retirement Plan: Pension after age 55 with 30 years of service or age 60 with 10 years of service. Current Pension contribution is 0%.	Employees can opt to remain in the DB pension plan and begin contributing 4% or switch to the DC plan for future service as of April 1, 2012. May also choose to remain in plan and contribute 4% until they reach 30 years of service at which point they would switch to DC plan. Overtime compensation earned after January 1, 2012 would be averaged over a 6-year period in the calculation used to determine pension allowance.
	Retiree Health Care: State pays 90% of health, dental, vision premiums.	No change

Employee Group	Current Benefit	HB 4701
Employees hired prior to March 31, 1997 who chose to switch to the DC/401(k) plan	Retirement Plan: 401(k) - 4% automatic State contribution, plus up to 3% State match of employee contribution.	No change
	Retiree Health Care: State pays 90% of health, dental, vision premiums.	No change

Employee Group	Current Benefit	HB 4701
Employees hired prior to March 31, 1997, formerly in the DB plan but who have since separated from the State.	Retirement Plan: Maintain DB plan benefits if they return and vest.	If already vested prior to separation: If reemployed after January 1, 2012, would be in DC plan for all future service but would receive pension benefit based on prior credit service and compensation. If not vested prior to separation: If reemployed after January 1, 2012 but prior to January 1, 2014 would be in DC plan for all future service but would receive pension benefit based on prior credit service and compensation. If hired on or after January 1, 2014 would no longer be eligible to remain in DB plan but would automatically be in the DC plan. No benefit for prior service.
	Retiree Health Care: Maintain 90% premium benefit if they return and vest.	If vested: No Change If not vested: Treated like new employees who would receive a 2% employer matching contribution for retiree health care to the 401(k)/457 plans.

Employee Group	Current Benefit	HB 4701
Employees hired since March 31, 1997 but before January 1, 2012	Retirement Plan: 401(k) - 4% automatic State contribution, plus up to 3% State match of employee contribution	No change
	Retiree Health Care: Graded Premium - Earn 3% of premium per year of service up to a maximum of 90%.	Existing employees may choose one of the following two options: 1. Convert to a DC style health benefit • Like new employees would receive up to a 2% State matching contribution for retiree health care to either their 401(k)/457 plans. • A monetized amount based on years of service and adjusted annually the medical care component of CPI but not less than 0% or greater than 4%, contributed to the either their 401(k)/457 account 50% upon separation (with at least 10 years of service) or 100% upon retirement. 2. No change - Retain the graded premium subsidy Former employees with at least 10 years of service, who return to employment prior to January 1, 2014, would be allowed to make the election above.

Employee Group	Type of Benefit	HB 4701
New Employees hired after January 1, 2012	Retirement plan: 401(k) - 4% automatic State contribution, plus up to 3% State match of employee contribution	No change
	Retiree Health: Graded Premium - Earn 3% of premium per year of service up to a maximum of 90%.	New employees would receive up to a 2% State matching contribution for retiree health care to either their 401(k)/457 plans plus $2,000 upon retirement or $1,000 upon termination (after at least ten years of service) into a Health Reimbursement Account (HRA). The $2,000 provision would sunset after 5 years.

3% Retiree Health Care on all employees	Would end the contribution as of the second pay period after the bill is enacted, and be refunded by first pay period after April 1, 2012. Employees would have the option of receiving the refund in their paychecks or in their 401(k) or 457 account.

Total Annual Required Contribution for Retiree Health	Existing Employees	Between $713M and $743M.
	New Employees	2.0% of pay