

# HOUSE BILL No. 5109

October 2, 2001, Introduced by Reps. Voorhees, Vander Roest, Birkholz, Richardville, Patterson, DeWeese, Caul, Woronchak, Bovin, Stewart, Cameron Brown, Kolb, Minore, Sheltroun, Dennis, Pestka, Jelinek, Jacobs, Switalski, Bernero, Mead, Gosselin, Neumann, Murphy, Meyer, Rich Brown, Phillips, Clark, Daniels, Tabor, Wojno, Bogardus, Ruth Johnson, Shackleton, Allen, Vander Veen, Hansen, Rivet, Pappageorge, Spade, Whitmer, Middaugh, Drolet, Kuipers, George, Schauer and Richner and referred to the Committee on Appropriations.

A bill to amend 1943 PA 240, entitled "State employees' retirement act," by amending sections 31, 40, and 69 (MCL 38.31, 38.40, and 38.69), section 31 as amended by 1998 PA 205, section 40 as amended by 1991 PA 48, and section 69 as added by 1996 PA 487.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**HOUSE BILL No. 5109** 1 Sec. 31. (1) Except as provided in subsection (6), before  
2 the effective date of retirement, but not after the effective  
3 date of retirement, a member or deferred member who is eligible  
4 for retirement, as provided in this act, shall elect to receive  
5 his or her benefit in a retirement allowance payable throughout  
6 life, which shall be called a regular retirement allowance, or to  
7 receive the actuarial equivalent at that time of his or her  
8 regular retirement allowance in a reduced retirement allowance  
9 payable throughout the lives of the retirant and a retirement

1 allowance beneficiary, pursuant to 1 of the following payment  
2 options:

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

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

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

21 (2) Except as provided in subsections (3) and (8), the elec-  
22 tion of a payment option under subsection (1) shall not be  
23 changed on or after the effective date of the retirement  
24 allowance. A retirement allowance beneficiary designated under  
25 this section shall not be changed on or after the effective date  
26 of the retirement allowance, and shall be either a spouse,  
27 brother, sister, parent, child, including an adopted child, or

1 grandchild of the person making the designation. Payment to a  
2 retirement allowance beneficiary shall begin on the first day of  
3 the month following the death of the retirant or member.

4 (3) If the retirement allowance beneficiary named under a  
5 payment option under subsection (1) predeceases the retirant, the  
6 retirant's benefit shall revert to the regular retirement allow-  
7 ance, effective with the first day of the month following the  
8 retirement allowance beneficiary's death. For a retirant whose  
9 effective date of retirement was on or before June 28, 1976, this  
10 subsection shall apply, but the regular retirement allowance is  
11 not payable for any month beginning before the later of the  
12 retirement allowance beneficiary's death or January 1, 1986. A  
13 retirant who on January 1, 1986 is receiving a reduced retirement  
14 allowance because the retirant designated a retirement allowance  
15 beneficiary and the retirement allowance beneficiary predeceased  
16 the retirant is eligible to receive the regular retirement allow-  
17 ance beginning January 1, 1986, but the regular retirement allow-  
18 ance is not payable for any month beginning before January 1,  
19 1986.

20 (4) A member who continues in the employ of this state on  
21 and after the date he or she acquires 10 years of service credit  
22 or becomes eligible for deferred retirement as provided by sec-  
23 tion 20(4) or (5), whichever occurs first, may by written decla-  
24 ration ~~duly~~ executed and filed with the retirement board elect  
25 option A, provided for in subsection (1)(a), and nominate a  
26 retirement allowance beneficiary in the same manner as if the  
27 member were then retiring from service, notwithstanding that the

1 member may not have attained 60 years of age. If the  
2 beneficiary's death or divorce from the member occurs before the  
3 effective date of the member's retirement, the member's election  
4 of option A and nomination of retirement allowance beneficiary  
5 shall be automatically revoked and the member may again elect  
6 option A and nominate a retirement allowance beneficiary at any  
7 time before the effective date of retirement. If a member who  
8 has made an election and nominated a retirement allowance benefi-  
9 ciary as provided in this subsection dies before the effective  
10 date of his or her retirement, then the retirement allowance ben-  
11 eficiary shall immediately receive the retirement allowance that  
12 he or she would have been entitled to receive under option A if  
13 the member had been regularly retired on the date of the member's  
14 death. Except as otherwise provided by subsection (5), if a  
15 member who has made an election under this subsection subse-  
16 quently retires under this act, his or her election of option A  
17 shall take effect at the time of retirement. Subject to the  
18 requirements of subsection (5), the member, before the effective  
19 date of retirement, but not after the effective date of retire-  
20 ment, may revoke his or her previous election of option A and  
21 elect to receive his or her retirement allowance as a regular  
22 retirement allowance or under option B or C as provided for in  
23 subsection (1). A retirement allowance shall not be paid under  
24 this subsection on account of the death of a member if any bene-  
25 fits are paid under section 27 on account of his or her death.  
26 If a deferred member who has an option A election in effect dies  
27 before the effective date of his or her retirement, the

1 retirement allowance payable under option A shall be paid to the  
2 retirement allowance beneficiary at the time the deceased  
3 deferred member otherwise would have been eligible to begin  
4 receiving benefits.

5 (5) If a member, deferred member, retiring member, or retir-  
6 ing deferred member is married at the effective date of the  
7 retirement allowance, an election under this section, other than  
8 an election of a payment option under subsection (1) naming the  
9 spouse as retirement allowance beneficiary, shall not be effec-  
10 tive unless the election is signed by the spouse. However, this  
11 requirement may be waived by the retirement board if the signa-  
12 ture of a spouse cannot be obtained because of extenuating  
13 circumstances. As used in this subsection, "spouse" means the  
14 person to whom the member, deferred member, retiring member, or  
15 retiring deferred member is married at the effective date of the  
16 retirement allowance.

17 (6) Until July 1, 1991, upon request in a form as determined  
18 by the retirement board, a nonduty disability retirant who  
19 retired under section 24 may change his or her election to  
20 receive a disability retirement allowance computed as a regular  
21 retirement allowance and elect to receive the actuarial equiva-  
22 lent at the time of the election pursuant to this subsection of  
23 his or her disability retirement allowance in a reduced retire-  
24 ment allowance payable to the retirant and the retirant's spouse  
25 pursuant to the provisions of a payment option as provided in  
26 subsection (1), if the disability retirement allowance effective  
27 date was before November 12, 1985 and the retirant had 25 or more

1 years of credited service on the disability retirement allowance  
2 effective date. The nonduty disability retirant shall begin to  
3 receive the reduced retirement allowance under this subsection  
4 effective the first day of the month following the month in which  
5 the retirant makes the election pursuant to this subsection. As  
6 used in this subsection, "spouse" means the person to whom the  
7 nonduty disability retirant was married on the effective date of  
8 his or her disability retirement allowance and on the date the  
9 retirant makes the election pursuant to this subsection.

10 (7) If a member who continues in the employ of this state on  
11 and after the date he or she acquires 10 years of service credit,  
12 or on and after the date he or she becomes eligible for deferred  
13 retirement as provided by section 20(4) or (5), whichever occurs  
14 first, and who does not have an election of option A in force as  
15 provided in subsection (4), dies before the effective date of  
16 retirement and leaves a surviving spouse, the spouse shall  
17 receive a retirement allowance computed in the same manner as if  
18 the member had retired effective the day before the date of his  
19 or her death, elected option A, and nominated the spouse as  
20 retirement allowance beneficiary. When the retirement allowance  
21 beneficiary dies, his or her retirement allowance shall  
22 terminate. If the aggregate amount of retirement allowance pay-  
23 ments received by the beneficiary is less than the accumulated  
24 contributions credited to the member's account in the employees'  
25 savings fund at the time of the member's death, the difference  
26 between the accumulated contributions and the aggregate amount of  
27 retirement allowance payments received by the beneficiary shall

1 be transferred from the employer's accumulation fund or pension  
2 reserve fund to the employees' savings fund and paid pursuant to  
3 section 29. A retirement allowance shall not be paid under this  
4 subsection on account of the death of a member if benefits are  
5 paid under section 27 on account of his or her death.

6 (8) If a retirant receiving a reduced retirement allowance  
7 under a payment option under subsection (1) is divorced from the  
8 spouse who had been designated as the retirant's retirement  
9 allowance beneficiary under the option, the election of the pay-  
10 ment option shall be considered void by the retirement system if  
11 the judgment of divorce or award or order of the court, or an  
12 amended judgment of divorce or award or order of the court,  
13 described in ~~section 40~~ THE PUBLIC EMPLOYEE RETIREMENT BENEFIT  
14 PROTECTION ACT and dated after June 27, 1991 provides that the  
15 election of the payment option under subsection (1) is to be con-  
16 sidered void by the retirement system and the retirant provides a  
17 certified copy of the judgment of divorce or award or order of  
18 the court, or an amended judgment of divorce or award or order of  
19 the court, to the retirement system. If the election of a pay-  
20 ment option under subsection (1) is considered void by the  
21 retirement system under this subsection, the retirant's retire-  
22 ment allowance shall revert to a regular retirement allowance,  
23 including postretirement adjustments, if any, subject to an award  
24 or order of the court as described in ~~section 40~~ THE PUBLIC  
25 EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT. The retirement  
26 allowance shall revert to a regular retirement allowance under  
27 this subsection effective the first of the month after the date

1 the retirement system receives a certified copy of the judgment  
2 of divorce or award or order of the court. This subsection does  
3 not supersede a judgment of divorce or award or order of the  
4 court in effect on June 27, 1991. This subsection does not  
5 require the retirement system to distribute or pay retirement  
6 assets on behalf of a retirant in an amount that exceeds the  
7 actuarially determined amount that would otherwise become payable  
8 if a judgment of divorce had not been rendered.

9 ~~-(9) A retirement allowance payable under a payment option~~  
10 ~~provided in this section is subject to an eligible domestic rela-~~  
11 ~~tions order under the eligible domestic relations order act, 1991~~  
12 ~~PA 46, MCL 38.1701 to 38.1711.~~

13 Sec. 40. ~~-(1)~~ The right of a person to a pension, an annu-  
14 ity, a retirement allowance, any optional benefit, any other  
15 right accrued or accruing to any person under the provisions of  
16 this act, the various funds created by this act, and all money  
17 and investments and income of the funds, are exempt from any  
18 state, county, municipal, or other local tax. ~~, and shall not be~~  
19 ~~subject to execution, garnishment, attachment, the operation of~~  
20 ~~bankruptcy or insolvency laws, or other process of law, and shall~~  
21 ~~be unassignable except as otherwise provided in this act.~~ THE  
22 RIGHT OF A PERSON TO A PENSION, AN ANNUITY, A RETIREMENT ALLOW-  
23 ANCE, ANY OPTIONAL BENEFIT, ANY OTHER RIGHT ACCRUED OR ACCRUING  
24 TO ANY PERSON UNDER THE PROVISIONS OF THIS ACT, THE VARIOUS FUNDS  
25 CREATED BY THIS ACT, AND ALL MONEY AND INVESTMENTS AND INCOME OF  
26 THE FUNDS IS SUBJECT TO THE PUBLIC EMPLOYEE RETIREMENT BENEFIT  
27 PROTECTION ACT.

1       ~~(2) The right of a member, member on deferred retirement~~  
2 ~~status under section 20(4), or retirant to a pension, an annuity,~~  
3 ~~a retirement allowance, any optional benefit, accumulated contri-~~  
4 ~~butions, or any other benefit under the provisions of this act~~  
5 ~~shall be subject to award by a court pursuant to section 18 of~~  
6 ~~chapter 84 of the Revised Statutes of 1846, being section 552.18~~  
7 ~~of the Michigan Compiled Laws, and to any other order of a court~~  
8 ~~pertaining to alimony or child support. The right of a member,~~  
9 ~~deferred member, or retirant to a pension, an annuity, a retire-~~  
10 ~~ment allowance, or an optional benefit under this act is subject~~  
11 ~~to an eligible domestic relations order under the eligible domes-~~  
12 ~~tic relations order act.~~

13       ~~(3) If an award or order described in subsection (2)~~  
14 ~~requires the retirement system to withhold payment of a pension,~~  
15 ~~deferred pension, accumulated contributions, or other benefit~~  
16 ~~from the person to whom it is due or requires the retirement~~  
17 ~~system to make payment or requires the person to request that the~~  
18 ~~retirement system make payment of a pension, deferred pension,~~  
19 ~~accumulated contributions, or other benefit, for the purpose of~~  
20 ~~meeting the person's obligations to a spouse, former spouse or~~  
21 ~~child, as provided in subsection (2), the withholding or payment~~  
22 ~~provisions of the award or order shall be effective only against~~  
23 ~~such amounts as they become payable to the person receiving a~~  
24 ~~retirement allowance unless otherwise provided in an eligible~~  
25 ~~domestic relations order under the eligible domestic relations~~  
26 ~~order act. The limitation contained in this subsection shall not~~

1 ~~apply to the accumulated contributions of a person who has~~  
2 ~~terminated employment before acquiring a vested member status.~~

3       Sec. 69. (1) Distributions from employer contributions made  
4 pursuant to section 63(2) and (3) and earnings on those employer  
5 contributions, and distributions from employee contributions made  
6 pursuant to section 63(3) and earnings on those employee contri-  
7 butions, are exempt from any state, county, municipal, or other  
8 local tax. ~~, and shall not be subject to execution, garnishment,~~  
9 ~~attachment, the operation of bankruptcy or insolvency laws, or~~  
10 ~~other process of law, and shall be unassignable except as other-~~  
11 ~~wise provided in this act.~~ DISTRIBUTIONS FROM EMPLOYER CONTRIBU-  
12 TIONS MADE PURSUANT TO SECTION 63(2) AND (3) AND EARNINGS ON  
13 THOSE EMPLOYER CONTRIBUTIONS AND DISTRIBUTIONS FROM EMPLOYEE CON-  
14 TRIBUTIONS MADE PURSUANT TO SECTION 63(3) AND EARNINGS ON THOSE  
15 EMPLOYEE CONTRIBUTIONS ARE SUBJECT TO THE PUBLIC EMPLOYEE RETIRE-  
16 MENT BENEFIT PROTECTION ACT.

17       ~~(2) The right of a qualified participant or a former quali-~~  
18 ~~fied participant, or his or her beneficiaries, to a distribution~~  
19 ~~described in subsection (1) is subject to forfeiture pursuant to~~  
20 ~~the public employee retirement benefits forfeiture act, Act~~  
21 ~~No. 350 of the Public Acts of 1994, being sections 38.2701 to~~  
22 ~~38.2705 of the Michigan Compiled Laws.~~

23       ~~(3) The right of a qualified participant or former qualified~~  
24 ~~participant to a distribution described in subsection (1) is~~  
25 ~~subject to an award by a court pursuant to section 18 of chapter~~  
26 ~~84 of the Revised Statutes of 1846, being section 552.18 of the~~  
27 ~~Michigan Compiled Laws; an eligible domestic relations order~~

1 ~~under the eligible domestic relations order act, Act No. 46 of~~  
2 ~~the Public Acts of 1991, being sections 38.1701 to 38.1711 of the~~  
3 ~~Michigan Compiled Laws; and to any other domestic relations order~~  
4 ~~of a court pertaining to alimony or child support.~~

5       ~~(4) If an award or order described in subsection (3)~~  
6 ~~requires Tier 2 to withhold payment of a distribution described~~  
7 ~~in subsection (1) or requires Tier 2 to make payment or requires~~  
8 ~~the individual to request that Tier 2 make payment of a distribu-~~  
9 ~~tion described in subsection (1), for the purpose of meeting the~~  
10 ~~individual's obligations to a spouse, former spouse, or child, as~~  
11 ~~provided in subsection (3), the withholding or payment provisions~~  
12 ~~of the award or order are effective only against such amounts as~~  
13 ~~they become due and payable to the individual receiving the dis-~~  
14 ~~tribution, unless otherwise provided in an eligible domestic~~  
15 ~~relations order under Act No. 46 of the Public Acts of 1991. The~~  
16 ~~limitation contained in this subsection does not apply to the~~  
17 ~~accumulated employee contributions of a former qualified partici-~~  
18 ~~pant who has terminated employment before acquiring a vested~~  
19 ~~status in Tier 2 pursuant to this act.~~

20       ~~(2) (5)~~ The state treasurer has the right of setoff to  
21 recover overpayments made under this act and to satisfy any  
22 claims arising from embezzlement or fraud committed by a quali-  
23 fied participant, former qualified participant, refund beneficia-  
24 ry, or other person who has a claim to a distribution or any  
25 other benefit from Tier 2.

1           (3) ~~-(6)-~~ The state treasurer shall correct errors in the  
2 records and actions in Tier 2 under this act, and shall seek to  
3 recover overpayments and shall make up underpayments.

4           Enacting section 1. This amendatory act does not take  
5 effect unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5108  
6 (request no. 02139'01 \*\*) of the 91st Legislature is enacted into  
7 law.