

HOUSE BILL NO. 4265

February 18, 2021, Introduced by Reps. Bollin, Albert, VanSingel, Bellino and Wozniak and referred to the Committee on Appropriations.

A bill to amend 1992 PA 234, entitled
"The judges retirement act of 1992,"
by amending sections 301, 305, 509, 604, 714, and 719 (MCL 38.2301, 38.2305, 38.2509, 38.2604, 38.2664, and 38.2669), sections 305 and 714 as amended by 2002 PA 95, section 604 as amended by 2018 PA 335, and section 719 as added by 1996 PA 523, and by adding sections 509a and 714a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. (1) The retirement system shall direct the actuary

1 to do all of the following:

2 (a) Determine the annual level ~~percent of payroll-dollar~~
 3 contribution rate to finance the benefits provided under this act
 4 by actuarial valuation ~~pursuant to~~ **under** subsections (2) and (3),
 5 and ~~upon~~ **on** the basis of the risk assumptions that the retirement
 6 board and the department adopt after consultation with the state
 7 treasurer and the actuary.

8 (b) Make an annual actuarial valuation of the retirement
 9 system in order to determine the actuarial condition of the
 10 retirement system and the required contribution to the retirement
 11 system.

12 (c) Make an annual actuarial gain-loss experience study of the
 13 retirement system in order to determine the financial effect of
 14 variations of actual retirement system experience from projected
 15 experience.

16 (d) **Beginning with the state fiscal year ending September 30,**
 17 **2023 and for each subsequent fiscal year, assume a rate of return**
 18 **on investments and a discount rate not to exceed 6.25% per annum.**

19 (e) **Beginning with the state fiscal year ending September 30,**
 20 **2023 and for each subsequent fiscal year, use layered amortization.**
 21 **As used in this subdivision, "layered amortization" means a fixed**
 22 **and closed period that separately layers the different components**
 23 **to be amortized over a fixed period not to exceed 10 years, as it**
 24 **emerges. The amortization period for layered amortization must use**
 25 **a level dollar amortization method.**

26 (2) The actuary shall compute the contribution rate for
 27 monthly benefits payable in the event of death of a member before
 28 retirement or the disability of a member using ~~a terminal funding~~
 29 **an individual projected benefit entry age normal cost** method of

1 ~~actuarial~~-valuation.

2 (3) The actuary shall compute the contribution rate for
 3 benefits other than those described in subsection (2) using an
 4 individual projected benefit entry age normal actuarial cost
 5 method. The contribution rate for service that may be rendered in
 6 the current year, **which is** known as the normal cost contribution
 7 rate, is equal to the aggregate amount of individual entry age
 8 normal costs divided by 1% of the aggregate amount of active
 9 members' valuation compensation. The contribution rate for unfunded
 10 service rendered on or before the last day of the fiscal year,
 11 **which is** known as the unfunded actuarial accrued liability
 12 contribution rate, is equal to the aggregate amount of unfunded
 13 actuarial accrued liabilities divided by 1% of the actuarial
 14 present value over a period not to exceed 40 years of projected
 15 benefit compensation, where unfunded actuarial accrued liabilities
 16 are equal to the actuarial present value of benefits reduced by the
 17 actuarial present value of future normal costs and the actuarial
 18 value of assets on the last day of the fiscal year.

19 Sec. 305. (1) Each member, ~~upon~~**on** taking office and ~~so long~~
 20 ~~as~~**while** he or she remains in office, shall make contributions to
 21 the retirement system according to the applicable plan member
 22 classification as follows:

23 (a) ~~A~~**Except as otherwise provided in section 509a, a** plan 1
 24 member or a plan 2 member shall contribute 5% of the member's
 25 compensation. From this contribution, the retirement system shall
 26 deposit an amount equal to 2.0% of the member's compensation into
 27 the reserve for health benefits for hospital and medical-surgical
 28 and sick care benefits as provided in section 509.

29 (b) A plan 3a member, a plan 3b member, or a plan 5 member

1 shall contribute 3.5% of the member's compensation.

2 (c) A plan 3c member, a plan 4 member, a plan 6 member, or a
3 plan 7 member shall contribute 7% of the member's compensation.
4 However, a plan 6 member shall not contribute more than \$980.00
5 annually.

6 (2) The retirement board shall determine the manner in which
7 member contributions are paid. Except as otherwise provided in this
8 section, the retirement system shall credit member contributions
9 when received to the reserve for member contributions.

10 (3) ~~Upon~~ **On** written notice from the executive secretary to the
11 state court administrator, the state treasurer shall withhold
12 payment of the amount due from the salary standardization payment
13 payable to a county or district control unit for member
14 contributions that are not received by the retirement system within
15 60 days after the due date.

16 Sec. 509. (1) The retirement system shall pay the premium for
17 hospital and medical-surgical and sick care benefits for a retirant
18 who, as a member, served after January 1, 1983 as a justice of the
19 supreme court, judge of the court of appeals, or a state official,
20 or for his or her retirement allowance beneficiary who elects
21 coverage in the state group health insurance plan, to the same
22 extent as is provided for retirants and retirement allowance
23 beneficiaries of the state employees' retirement system created by
24 the state employees' retirement act, ~~Act No. 240 of the Public Acts~~
25 ~~of 1943, being section 38.1 to 38.48 of the Michigan Compiled~~
26 ~~Laws.~~ **1943 PA 240, MCL 38.1 to 38.69.**

27 (2) The retirement system shall pay the premium under
28 subsection (1) only if section ~~305(1)(a)~~ **305(1)(a)** requires member
29 contributions for hospital and medical-surgical and sick care

1 benefits.

2 (3) This section does not apply to an individual who first
3 became a member or qualified participant on or after July 1, 2021
4 or to a qualified member who made an election to opt out of health
5 insurance coverage under section 509a. As used in this subsection,
6 "qualified member" means that term as defined in section 509a.

7 Sec. 509a. (1) For a member or qualified participant who is
8 not eligible for any future health insurance coverage premium from
9 the retirement system or for a qualified member who made the
10 election under subsection (3), in addition to the contributions
11 under section 714(3), the member or qualified participant may
12 contribute up to 4% of the member's or qualified participant's
13 salary to Tier 2. A member or qualified participant who makes a
14 contribution under this subsection may make additional
15 contributions to his or her Tier 2 account as permitted by the
16 department and the internal revenue code.

17 (2) A member or qualified participant is vested in
18 contributions made to his or her Tier 2 account under subsection
19 (1) according to the vesting provisions under section 715.

20 (3) Except as otherwise provided in this section, beginning
21 July 1, 2021 and ending at 5 p.m. eastern daylight time on
22 September 15, 2021, the retirement system shall permit each
23 qualified member to make an election to opt out of health insurance
24 coverage premiums that would have been paid by the retirement
25 system under sections 509 and 719 and opt into the Tier 2 account
26 provisions of this section effective October 1, 2021. A qualified
27 member who makes the election under this subsection shall cease
28 accruing years of service credit for purposes of calculating a
29 portion of the health insurance coverage premiums that would have

1 been paid by the retirement system under sections 509 and 719 as if
2 that coverage continued to apply. The election under this
3 subsection must be completed in a manner and by methods as
4 determined by the retirement system.

5 (4) A qualified member who does not make the election under
6 subsection (3) continues to be eligible for the payment of health
7 insurance coverage premiums by the retirement system under sections
8 509 and 719 and is not eligible for the Tier 2 account provisions
9 of this section. The retirement system shall treat an individual
10 who is not a qualified member, who is a former member on June 30,
11 2021, and who is reemployed by an employer after June 30, 2021 in
12 the same manner as a member described in this subsection who did
13 not make the election under subsection (3).

14 (5) The retirement system shall calculate an amount to be
15 credited to a Tier 2 account for each qualified member who makes
16 the election under subsection (3). The amount must equal the
17 contributions made by the qualified member for hospital and
18 medical-surgical and sick care benefits under section 305(1)(a) or
19 714(6), as applicable. A qualified member who makes the election
20 under subsection (3) shall cease making contributions into the
21 reserve for health benefits for hospital and medical-surgical and
22 sick care benefits under section 305(1)(a) or 714(6), as
23 applicable, as determined by the retirement system, but no later
24 than the first payroll date after October 1, 2021. The amount
25 calculated under this subsection must be deposited as an employer
26 contribution into the qualified member's Tier 2 account as
27 determined by the retirement system, but no later than the first
28 payroll date after January 1, 2022. A qualified member is
29 immediately 100% vested in amounts deposited to his or her Tier 2

1 account under this subsection.

2 (6) A qualified member who has a break in service and is
3 reemployed retains the same election made under this section before
4 the break in service. If the qualified member did not make the
5 election under subsection (3), the qualified member shall continue
6 to make the contributions as provided under section 305(1)(a) or
7 714(6), as applicable.

8 (7) Instead of any other health insurance coverage premium
9 that might have been paid by the retirement system under sections
10 509 and 719, a credit to a health reimbursement account within the
11 trust created under the public employee retirement health care
12 funding act, 2010 PA 77, MCL 38.2731 to 38.2747, must be made by
13 the retirement system in the amounts and to the qualified
14 participants who are plan 1 or plan 2 members as follows:

15 (a) Two thousand dollars to an individual who first became a
16 qualified participant after September 30, 2021, who is 60 years of
17 age or older, and who has at least 10 years of service at his or
18 her first termination of employment.

19 (b) One thousand dollars to an individual who first became a
20 member or qualified participant after September 30, 2021, who is
21 less than 60 years of age, and who has at least 10 years of service
22 at his or her first termination of employment.

23 (8) The retirement system shall determine a method to
24 implement subsections (3) to (7), including a method for crediting
25 the amounts in those subsections to comply with any restrictions
26 imposed by the internal revenue code. Notwithstanding any provision
27 of this act to the contrary, the Tier 2 plan provisions of this
28 section must be implemented by the department as soon as feasible
29 but not later than January 1, 2022.

(9) Subsections (3) to (7) do not apply to a member or qualified participant who is eligible for the payment of health insurance coverage premiums by the retirement system as a result of benefits provided under section 507.

(10) As used in this section:

(a) "Qualified member" means a member or qualified participant who meets all of the following requirements:

(i) He or she first became a member or qualified participant before July 1, 2021.

(ii) He or she has earned service credit in the 12 months ending June 30, 2021 or was on an approved professional services or military leave of absence on June 30, 2021.

(iii) He or she is a plan 1 member or plan 2 member who is eligible to qualify for future health insurance coverage premium from the retirement system.

(b) "Salary" means that term as defined in section 706.

Sec. 604. (1) This section is enacted under section 401(a) of the internal revenue code, 26 USC 401, which 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 organization exempt from taxation under section 501 of the internal revenue code, 26 USC 501. The department shall administer the retirement system to fulfill the intent of this subsection.

(2) The retirement system ~~shall~~**must** 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 must 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 applies 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 must be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and must not be used for any other purpose. The assets must 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 on retirement, under Internal Revenue Service regulations and approved Internal Revenue Service exclusion ratio tables.

(5) The required beginning date for retirement allowances and

1 other distributions must not be later than April 1 of the calendar
2 year following the calendar year in which the employee attains age
3 70-1/2 or April 1 of the calendar year following the calendar year
4 in which the employee retires. The required minimum distribution
5 requirements imposed by section 401(a)(9) of the internal revenue
6 code, 26 USC 401, apply to this act and must be administered in
7 accordance with a reasonable and ~~good faith~~ **good-faith**
8 interpretation of the required minimum distribution requirements
9 for all years in which the required minimum distribution
10 requirements apply to this act.

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

17 (7) Notwithstanding any other provision of this act to the
18 contrary that would limit a distributee's election under this act,
19 a distributee may elect, at the time and in the manner prescribed
20 by the retirement board, to have any portion of an eligible
21 rollover distribution paid directly to an eligible retirement plan
22 specified by the distributee in a direct rollover. This subsection
23 applies to distributions made after December 31, 1992.

24 (8) For purposes of determining actuarial equivalent
25 retirement allowances under sections 506(1)(a) and (b) and 602, the
26 actuarially assumed interest rate must be determined by the
27 director of the department and the retirement board in consultation
28 with the actuary using the mortality tables adopted by the
29 department and the retirement board. **Beginning with the state**

1 fiscal year ending September 30, 2023 and for each subsequent state
2 fiscal year, for the purposes of determining actuarial equivalent
3 retirement allowances under sections 506(1)(a) and (b) and 602, the
4 actuarial assumed interest rate and discount rate must not exceed
5 6.25% using the most recent available mortality tables provided by
6 the Actuarial Standards Board and used as risk assumptions by the
7 actuary during the most recent experience study.

8 (9) Notwithstanding any other provision of this act, the
9 compensation of a member of the retirement system must be taken
10 into account for any year under the retirement system only to the
11 extent that it does not exceed the compensation limit established
12 in section 401(a)(17) of the internal revenue code, 26 USC 401, as
13 adjusted by the commissioner of internal revenue. This subsection
14 applies to an individual who first becomes a member of the
15 retirement system after September 30, 1996.

16 (10) Notwithstanding any other provision of this act,
17 contributions, benefits, and service credit with respect to
18 qualified military service will be provided under the retirement
19 system in accordance with section 414(u) of the internal revenue
20 code, 26 USC 414. This subsection applies to all qualified military
21 service after December 11, 1994. Beginning on January 1, 2007, in
22 accordance with section 401(a)(37) of the internal revenue code, 26
23 USC 401, if a member dies while performing qualified military
24 service, for purposes of determining any death benefits payable
25 under this act, the member is treated as having resumed and then
26 terminated employment on account of death.

27 Sec. 714. (1) This section is subject to the vesting
28 requirements of section 715.

29 (2) A qualified participant's employer shall contribute to the

1 qualified participant's account in Tier 2 an amount equal to 4% of
2 the qualified participant's salary.

3 (3) A qualified participant may periodically elect to
4 contribute up to 3% of his or her salary to his or her Tier 2
5 account. The qualified participant's employer shall make an
6 additional contribution to the qualified participant's Tier 2
7 account in an amount equal to the contribution made by the
8 qualified participant under this subsection.

9 (4) A qualified participant may make contributions in addition
10 to contributions made under subsection (3) to his or her Tier 2
11 account as permitted by the state treasurer and the internal
12 revenue code. The qualified participant's employer shall not match
13 contributions made by the qualified participant under this
14 subsection.

15 (5) A qualified participant who makes a written election under
16 section 701a may elect to contribute up to 6% of his or her salary
17 to his or her Tier 2 account. In lieu of employer contributions
18 under subsection (3), the qualified participant's employer shall
19 make an additional contribution to the qualified participant's Tier
20 2 account in an amount equal to the contribution made by the
21 qualified participant under this subsection. This subsection
22 applies for a period as determined by the department that equals
23 the time in which a Tier 1 member was not able to make
24 contributions to the Tier 2 plan because of the temporary
25 restraining order issued in the case of ~~Michigan judges assn v~~
26 ~~Treasurer of the State of Michigan, case no. 98-DT-72771-CV (Ed~~
27 ~~Mi).~~ **Michigan Judges Assn v Treasurer of Michigan, opinion of the**
28 **United States District Court for the Eastern District of Michigan**
29 **(Case No. 98-DT-72771-CV).**

1 (6) ~~Beginning~~ **Except as otherwise provided in section 509a,**
 2 **beginning** January 1, 2002, ~~each~~ a qualified participant who is a
 3 plan 1 member or a plan 2 member, ~~upon~~ **on** taking office and ~~so long~~
 4 ~~as~~ **while** he or she remains in office, shall contribute 2.0% of the
 5 qualified participant's compensation to the retirement system. The
 6 retirement system shall deposit the contribution under this
 7 subsection into the reserve for health benefits for hospital and
 8 medical-surgical and sick care benefits as provided in section 719.

9 **Sec. 714a. Tier 2 and tax-deferred accounts are subject to the**
 10 **following terms and conditions:**

11 (a) Before April 2, 2022, the retirement system shall design
 12 an automatic enrollment feature that provides that unless a
 13 qualified participant who makes contributions under section 714(3)
 14 elects to contribute a lesser amount, the qualified participant
 15 shall contribute the amount required to qualify for all eligible
 16 matching contributions under this act. The retirement system shall
 17 implement this automatic enrollment feature as soon as
 18 administratively feasible, but no later than 12 months after the
 19 effective date of the amendatory act that added this section.

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

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

29 (d) Elective employee contributions may not be used as the

1 basis for more than an equivalent amount of employer matching
2 contributions.

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

7 Sec. 719. (1) A former qualified participant may elect health
8 insurance benefits in the manner prescribed in this section if he
9 or she meets both of the following requirements:

10 (a) The former qualified participant is vested in health
11 ~~benefits~~**insurance coverage** under section 715(2).

12 (b) The former qualified participant meets or exceeds the
13 benefit commencement age ~~employed~~**used** in the actuarial present
14 value calculation under section 702 and the service requirements
15 that would have applied to that former participant under Tier 1 for
16 receiving health insurance coverage under section 509, if that
17 former participant was a member of Tier 1.

18 (2) A former qualified participant who is eligible to elect
19 health insurance coverage under subsection (1) may elect health
20 insurance coverage in a health benefit plan or plans as authorized
21 by section 509, or in another plan as provided in subsection (6). A
22 former qualified participant who is eligible to elect health
23 insurance coverage under subsection (1) may also elect health
24 insurance coverage for his or her health benefit dependents, if
25 any. A surviving health benefit dependent of a deceased former
26 qualified participant who is eligible to elect health insurance
27 coverage under subsection (1) may elect health insurance coverage
28 in the manner prescribed in this section.

29 (3) Except as otherwise provided in subsection (6), an

1 individual who elects health insurance coverage under this section
2 ~~shall~~**will** become a member of a health insurance coverage group
3 authorized ~~pursuant to~~**under** section 509.

4 (4) For a former qualified participant who is eligible to
5 elect health insurance coverage under subsection (1) and who is
6 vested in those benefits under section 715(2)(a), and for his or
7 her health benefit dependents, this state shall pay a portion of
8 the health insurance premium as calculated under this subsection on
9 a cash disbursement method. An individual described in this
10 subsection who elects health insurance coverage under this section
11 shall pay to the retirement system the remaining portion of the
12 health insurance coverage premium not paid by this state under this
13 subsection. The portion of the health insurance coverage premium
14 paid by this state under this subsection ~~shall~~**must** be 50% of the
15 payments for health insurance coverage under section 509 if the
16 former qualified participant has 4 years of service; 75% of the
17 payments for health insurance coverage under section 509 if the
18 former qualified participant has 5 years of service; or 90% of the
19 payments for health insurance coverage under section 509 if the
20 former qualified participant has 6 years of service. If the
21 individual elects the health insurance coverage provided under
22 section 509, ~~the~~**this** state shall transfer its portion of the
23 amount calculated under this subsection to the reserve for health
24 benefits created by section 214.

25 (5) For a former qualified participant who is eligible to
26 elect health insurance coverage under subsection (1) and who is
27 vested in those benefits under section 715(2)(b), and for his or
28 her health benefit dependents, this state shall pay a portion of
29 the health insurance premium as calculated under this subsection on

1 a cash disbursement method. An individual described in this
 2 subsection who elects health insurance coverage under this section
 3 shall pay to the retirement system the remaining portion of the
 4 health insurance coverage premium not paid by this state under this
 5 subsection. The portion of the health insurance coverage premium
 6 paid by this state under this subsection ~~shall~~**must** be equal to the
 7 premium amounts paid on behalf of retirants of Tier 1 for health
 8 insurance coverage under section 509. If the individual elects the
 9 health insurance coverage provided under section 509, ~~the~~**this**
 10 state shall transfer its portion of the amount calculated under
 11 this subsection to the reserve for health benefits created by
 12 section 214.

13 (6) A former qualified participant or health benefit dependent
 14 who is eligible to elect health insurance coverage under this
 15 section and who elects health insurance coverage under a different
 16 plan than the plan authorized under section 509 may elect to have
 17 an amount up to the amount of the retirement system's share of the
 18 monthly health insurance premium subsidy provided in this section
 19 paid by the retirement system directly to the other health
 20 insurance plan or to a medical savings account established ~~pursuant~~
 21 ~~to~~**under** section 220 of the internal revenue code, **26 USC 220**, to
 22 the extent allowed by law or under the provisions and procedures of
 23 Tier 2.

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

1 (8) This section does not apply to an individual who first
2 became a member or qualified participant after June 30, 2021 or to
3 a qualified member who made an election to opt out of health
4 insurance coverage under section 509a. As used in this subsection,
5 "qualified member" means that term as defined in section 509a.