

MINUTES OF THE HOUSE KANSAS 2000 SELECT COMMITTEE.

The meeting was called to order by Vice Chairperson Deena Horst at 1:30 p.m. on February 4, 1999 in Room 526-S of the Capitol.

All members were present except: Representative Richard Alldritt - excused
Representative Bonnie Sharp - excused
Representative Kenny Wilk - excused

Committee staff present: Leah Robinson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janet Mosser, Committee Secretary

Conferees appearing before the committee: Thomas J. Cavanaugh, Chief Executive Officer, Gabriel, Roeder, Smith and Company

Others attending: See attached list

Thomas J. Cavanaugh, Chief Executive Officer, Gabriel, Roeder, Smith and Company, gave a presentation on the Third Interim Report to the State of Kansas Joint Committee on Pensions, Investments and Benefits on Retirement Plan Design Alternatives (Attachment 1).

Vice Chairperson Horst made a motion to introduce a Department of Administration legislative proposal authorizing the establishment and implementation of pilot programs related to the civil service. Rep. Sloan seconded the motion. The motion carried.

Minutes for January 26, 27 and 28 were distributed. Rep. Gatewood made a motion and Rep. Jenkins seconded the motion to approve the minutes as amended. The motion carried.

Vice Chairperson Horst adjourned the meeting at 2:22 p.m.

The next meeting is scheduled for February 8, 1999.

KANSAS 2000 SELECT COMMITTEE GUEST LIST

DATE: 2-4-99

NAME	TITLE	REPRESENTING
Bill Henry		KS Government Constabulary
Steve Forber		City of Wichita SEIU LOCAL 513
Gemma Forber		SEIU LOCAL 513
Craig Spulman		City of Wichita SEIU Local 513
Keith Haxton		SEAK
Craig Grant		KWEA
Lilla Breckler		KPER'S
Ruth Wood		KPER'S
Doree Trachte		KGE
Judy Peterson		DOC
Jack Robinson		SRS
Shaun Beland		SRS
Karen Wathly		DoA
Steve Ashley		DPS
Meredith Williams		KPER'S
Paul Wilson		KARE
Ronald Seiber		DoA
Lorus Chatwa		Dir. of the Budget
Dick Koerth		KDWP

THIRD INTERIM REPORT TO THE
STATE OF KANSAS
JOINT COMMITTEE ON PENSIONS,
INVESTMENTS AND BENEFITS
ON
RETIREMENT PLAN DESIGN ALTERNATIVES

Prepared by



Gabriel, Roeder, Smith & Company

January 19, 1999

Kansas 2000 Select Committee

Meeting Date 2-4-99

Attachment 1

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I. Introduction

INTRODUCTION

On Monday November 9, 1998 and Tuesday November 10, 1998, the Joint Committee on Pensions, Investments and Benefits (the Joint Committee) of the Kansas State Legislature met with Tom Cavanaugh and Brad Armstrong, consulting actuaries from Gabriel, Roeder, Smith & Company (GRS) to continue the study on retirement plan design alternatives.

The first day's meeting consisted of a presentation and discussion of the Second Interim Report, including three plan design alternatives to the current Kansas Public Employees' Retirement System (KPERS) and Kansas Police & Fire Retirement System (KP&FRS) structures, as well as two plan design alternatives that could be added to the current structures.

The three replacement design alternatives were:

- A combination plan like Plan 3 from the Washington Teachers' Retirement System (employee contributions fund a defined contribution plan, employer contributions fund a defined benefit plan).
- A pure defined contribution plan like the one from the Michigan State Employees Retirement System.
- A hybrid plan like Plan 3 from the City of Wichita Employees' Retirement System. All new employees automatically participate in a defined contribution plan for a specified period of years. At the end of the period, each member makes an irrevocable election whether to stay in the defined contribution plan, or to switch into an existing defined benefit plan.

The two additional design alternatives were:

- The introduction of an employer-match feature into a new statewide Section 457 deferred compensation program.
- A Deferred Retirement Option Plan (DROP).

The three replacement design alternative structures were discussed and their impact on retirement system members was determined by measuring the income adequacy of each using replacement ratios as the measurement tool. This was done under several different scenarios, and numerical examples were also provided.

The second day of the meeting was devoted to a thorough discussion of the goals individual Joint Committee members had for the retirement systems, and how the alternative designs might better meet those goals than the current structure.

The Joint Committee did unanimously support the following:

- a reaffirmation that the purpose of KPERS and KP&FRS is to provide **retirement** income.
- the conclusion that there were no broad employment problems that need to be addressed through major changes in the retirement systems.

Rather than have GRS produce a final report to the Legislature, the Joint Committee decided to extend their study of retirement plan design alternatives into the next legislative year. GRS was directed, instead, to produce this Third Interim Report on two specific alternatives:

- A pure DC Plan for new hires, under KPERS only, using the current employer normal cost rate for State/School members in KPERS (3.45% of pay) as the employer contribution rate. The mandatory member contribution rate would be 4% of pay with additional after tax contributions of as much as 6% of pay. There would be no separate employer match, and the vesting schedule for employer contributions would be 50% after two years of service, 75% after three years and 100% after four years.
- A DROP, under KPERS only, that provides for up to five years participation and full benefit credit. Interest would be credited to the DROP account balance at 8% per year. Members would be eligible for the DROP when first eligible for unreduced service retirement benefits.

Section II analyzes the income adequacy of the DC Plan, and provides the cost impact of such a move on the continued funding of the current KPERS structure. Section III provides further details about the DROP, and also provides the cost impact on KPERS. The employer cost figures were provided by the KPERS actuary, Milliman & Robertson (M&R).

II. Discussion and Analysis of Pure Defined Contribution Plan Alternative

DISCUSSION AND ANALYSIS OF PURE DEFINED CONTRIBUTION PLAN ALTERNATIVE

The Joint Committee directed GRS to analyze a pure DC plan as an alternative to the current KPERS structure for new hires only. The employer contribution rate would be equal to 3.45% of pay (the current normal cost rate under KPERS for State/School members). Employees would be required to contribute 4% of pay on a pre-tax basis, and could voluntarily contribute up to 6% on an after-tax basis.

The main features of the current structure and the alternative are presented in the table below:

CURRENT KPERS SYSTEM AND DC ALTERNATIVE

Feature	KPERS	DC Plan	
Benefit Accrual Rate	1.75% per year	N/A	
Vesting Period	10 years	Service	%
		<2 years	0%
		2	50
		3	75
		4+	100
Normal Retirement Age	65,62 and 10*, rule of 85**	N/A	
Early Retirement Age	55 and 10*	N/A	
Member Contribution Rate	4%	4% min, 10% max	
Employer Contribution Rate	Varies	3.45%	

* years of service

** age plus years of service

BENEFIT COMPARISON

This section will provide a comparison of the benefits that would be received by various retirees under both the KPERS structure and the DC Plan. For the DC Plan, the benefits are shown at both minimum and maximum employee contribution levels. It must be kept in mind, however, that it is unlikely employees would contribute additional amounts to the DC Plan on an after-tax basis when they have available to them, through the State's Section 457 plan, the ability to save 6% of pay and more on a before tax basis, unless they are already deferring the maximum allowable by law to the 457 plan.

The DC Plan benefits were determined by projecting account balances at retirement under three different annual rates of return: 6%, 8% (the current KPERS actuarial assumption) and 10%. The account balances were converted into annual lifetime benefits using an 8% interest rate assumption and the current retired life mortality table used for KPERS valuation purposes.

The following tables present the comparison of annual benefits, as well as displaying the projected account balances. DC Plan benefits that exceed the KPERS benefits are shown in bold. As can be seen, high rates of return and long service are required before the DC Plan provides greater benefits than the current KPERS structure, if the employee contributes the minimum.

At a maximum employee contribution rate, the DC Plan benefits are, in general, greater than KPERS. Of course, the improvement in comparison results for the DC Plan from minimum to maximum employee contribution rate is due solely to the significantly larger contribution made by employees. Comparing KPERS benefits with maximum DC Plan results without recognizing additional benefits employees can currently receive through like contributions to the Section 457 plan is very misleading.

BENEFIT COMPARISON (Minimum Employee Contribution)

Retiree			KERS Benefit	DC Plan (6%)		DC Plan (8%)		DC Plan (10%)	
Age	Service	Salary		Benefit	Account Balance	Benefit	Account Balance	Benefit	Account Balance
62	10	\$15,000	\$ 2,525	\$ 1,258	\$ 12,508	\$ 1,387	\$ 13,791	\$ 1,531	\$ 15,220
		30,000	5,051	2,516	25,016	2,774	27,582	3,062	30,440
		45,000	7,576	3,775	37,524	4,162	41,372	4,593	45,660
62	20	\$15,000	\$ 5,051	\$ 2,701	\$ 26,853	\$ 3,303	\$32,831	\$ 4,067	\$ 40,433
		30,000	10,101	5,402	53,705	6,605	65,663	8,134	80,866
		45,000	15,152	8,103	80,558	9,908	98,494	12,202	121,299
62	30	\$15,000	\$ 7,576	\$ 4,221	\$ 41,960	\$ 5,732	\$ 56,980	\$ 7,928	\$ 78,811
		30,000	15,152	8,442	83,921	11,464	113,961	15,855	157,622
		45,000	22,728	12,663	125,881	17,195	170,941	23,783	236,432
65	10	\$15,000	\$ 2,525	\$ 1,332	\$ 12,544	\$ 1,469	\$ 13,832	\$ 1,621	\$ 15,268
		30,000	5,051	2,664	25,087	2,937	27,664	3,242	30,536
		45,000	7,576	3,996	37,631	4,406	41,496	4,864	45,803
65	20	\$15,000	\$ 5,051	\$ 2,895	\$ 27,261	\$ 3,544	\$ 33,377	\$ 4,371	\$ 41,161
		30,000	10,101	5,789	54,522	7,088	66,754	8,741	82,322
		45,000	15,152	8,684	81,783	10,632	100,131	13,112	123,483
65	30	\$15,000	\$ 7,576	\$ 4,579	\$ 43,121	\$ 6,237	\$ 58,736	\$ 8,651	\$ 81,473
		30,000	15,152	9,158	86,243	12,474	117,473	17,302	162,946
		45,000	22,728	13,736	129,364	18,711	176,209	25,953	244,420

BENEFIT COMPARISON

(Maximum Employee Contribution)

Retiree			KPERs Benefit	DC Plan (6%)		DC Plan (8%)		DC Plan (10%)	
Age	Service	Salary		Benefit	Account Balance	Benefit	Account Balance	Benefit	Account Balance
62	10	\$15,000	\$ 2,525	\$ 2,272	\$ 22,582	\$ 2,504	\$ 24,897	\$ 2,764	\$ 27,478
		30,000	5,051	4,543	45,163	5,009	49,795	5,528	54,956
		45,000	7,576	6,815	67,745	7,513	74,692	8,292	82,434
62	20	\$15,000	\$ 5,051	\$ 4,877	\$ 48,479	\$ 5,962	\$ 59,273	\$ 7,343	\$ 72,997
		30,000	10,101	9,753	96,958	11,925	118,545	14,686	145,993
		45,000	15,152	14,630	145,437	17,887	177,818	22,029	218,990
62	30	\$15,000	\$ 7,576	\$ 7,620	\$ 75,754	\$10,348	\$ 102,871	\$14,312	\$142,283
		30,000	15,152	15,240	151,508	20,696	205,742	28,625	284,565
		45,000	22,728	22,861	227,261	31,044	308,612	42,937	426,848
65	10	\$15,000	\$ 2,525	\$ 2,405	\$ 22,646	\$ 2,652	\$ 24,972	\$ 2,927	\$ 27,564
		30,000	5,051	4,809	45,291	5,303	49,943	5,854	55,128
		45,000	7,576	7,214	67,937	7,955	74,915	8,781	82,692
65	20	\$15,000	\$ 5,051	\$ 5,226	\$ 49,216	\$ 6,398	\$ 60,258	\$ 7,891	\$ 74,311
		30,000	10,101	10,452	98,432	12,797	120,516	15,781	148,622
		45,000	15,152	15,678	147,649	19,195	180,774	23,672	222,933
65	30	\$15,000	\$ 7,576	\$ 8,266	\$ 77,850	\$11,260	\$106,041	\$15,618	\$147,089
		30,000	15,152	16,533	155,700	22,520	212,082	31,237	294,178
		45,000	22,728	24,799	233,550	33,779	318,123	46,855	441,267

COST IMPACT

Since the DC Plan would be available only to new hires, the financial impact on KPERS will emerge slowly over time as the membership shifts from KPERS to the DC Plan. With the actuarial funding method used for KPERS, the projected unit credit method, the normal cost will increase as the active membership ages.

To estimate the impact on the employer contribution rate to KPERS, GRS asked M&R to provide valuation results as of June 30, 1998 excluding all active members on that date with less than five years of service. Please see the "Kansas Public Employees Retirement System Valuation Report as of June 30, 1998" prepared by Milliman & Robertson, Inc. for details regarding the data, assets, actuarial assumptions and funding methods employed in producing the numbers that appear below and in the following section of this report.

By excluding all active members with less than five years of service and adjusting the actual assets for the lower contribution that would have been made over the five years, an estimate can be made of what the KPERS funding requirement would have been on June 30, 1998 assuming the DC Plan had been established for new State/School hires on July 1, 1993.

First, it is necessary to look at the impact of the members remaining in KPERS. The table below presents some key comparisons as of June 30, 1998 (\$ amounts in millions).

	KPERS State/School Finances	
	Current	With DC Plan
Liabilities:		
Actuarial Accrued Liability	\$6,729	\$6,631
Actuarial Value of Assets	<u>5,587</u>	<u>5,523</u>
Unfunded Actuarial Accrued Liability (UAAL)	\$1,142	\$1,108
Contributions (as % of payroll):		
Employer Normal Cost	3.45%	4.00%
UAAL Amortization Payment	<u>2.10</u>	<u>2.57</u>
Total Employer Rate	5.55%	6.57%
Number of Active Members	99,397	67,713
Covered Payroll	\$2,854.8	\$2,267.8

The contribution figures in this analysis are based on actuarial results without constraints.

The next step in the analysis is to combine the KPERS results shown above with the contributions from the DC Plan members to determine the overall financial impact on the State. This requires two calculations – a weighting of the normal cost rates and a weighted UAL amortization payment. In the latter calculation, it is assumed the State would contribute towards amortization of the UAL on the entire payroll base (\$2,854.8 million on June 30, 1998). This produces an amortization payment of 2.04% of payroll ($2.57\% \times \$2,267.8 \div \$2,854.8$).

Weighting the 4.00% normal cost rate for KPERS members (\$2,267.8 million payroll) and the 3.45% contribution rate for DC Plan members ($\$2,854.8 - 2,267.8 = \587.0 million payroll) produces an average “normal cost” rate of 3.89%. Combining the normal cost and UAL rates generates a total employer cost rate of 5.93% which may be compared with the valuation results of 5.55%.

This result is to be expected since the DC Plan contribution rate is set as the average normal cost rate for the DB Plan. The new hires are on average younger than the existing workforce and exhibit a lower than average normal cost rate under KPERS (which explains the increase in rate shown in the table above). By contributing for these members in the DC Plan at the average rate while only receiving a “credit” under KPERS for their actual rate, the overall cost must rise.

One final issue to address regarding the DC Plan is the employer contribution rate. The rate used for analysis was 3.45% of pay, the normal contribution rate in effect for State/School members. This, of course, is a blended rate. The actual normal rate for State members is 3.12% and for School members 3.58%. (If the DC Plan were extended to Local members, the applicable rate would be 2.55%). The use of a single rate for all groups can have an unanticipated impact on overall State retirement plan costs depending upon the mix of new hires among the groups.

**III. DISCUSSION AND ANALYSIS OF DEFERRED
RETIREMENT OPTION PLAN (DROP) FEATURE**

DISCUSSION AND ANALYSIS OF DEFERRED RETIREMENT OPTION PLAN (DROP) FEATURE

The Deferred Retirement Option Plan (DROP) feature is an optional program that can be added to the current KPERS structure. In participating in the DROP, eligible KPERS members elect to freeze their regular retirement benefit and to have that benefit deposited in a special account at KPERS, while they continue to work and draw a salary from a KPERS participating employer.

DROP PROVISIONS

Eligibility: A KPERS member who has completed age and service requirements for an unreduced retirement benefit may become a DROP participant.

Election of DROP: A member satisfying DROP eligibility conditions is permitted to either:

1. Retire, or
2. Continue working and retire at a future date with a pension based on credited service and final average salary (FAS) at date of termination of employment, or
3. Elect to participate in the DROP and retire at a date up to five years in the future with a pension based on service and FAS at the date of election to participate in the DROP.

DROP Credits: The account of a participating member is credited with:

1. the pension payments (excluding any ad-hoc COLA's granted during the DROP period) the member would have been paid if the member had retired on the date of the DROP election, and
2. interest on the outstanding balance at 8% per annum.

DROP Period: Up to five years. If a DROP participant does not terminate employment within the five year time period, the DROP account balance is forfeited.

DROP Payout:

Upon actual termination of employment, the frozen monthly pension begins, and the member can elect one of the following alternatives for the DROP account balance:

1. Receive a lump sum distribution,
2. Roll the account balance into an eligible plan such as an IRA,
or
3. Convert the account balance to a monthly benefit to enhance the frozen monthly pension.

Contributions:

Both member and employer contributions on behalf of the member cease during DROP participation.

There are a number of relatively minor design issues that will have to be addressed if a DROP is instituted. These include:

- The procedure when a member becomes disabled or dies during the period between an election to participate in the DROP and the date of termination of employment. Does the member forfeit the DROP account? Maintaining casualty coverage for DROP members often adds cost.
- Will retirement system amendments which become effective after the election to participate in the DROP and before termination of employment be applicable to the member?
- Accrued But Unused Sick/Vacation Leave: How will accrued but unused sick leave or vacation time and pay be coordinated with DROP? For example, if the member elected to DROP for one year but had 1,800 hours of unused leave and vacation time, would such an individual ever have to show up at work after electing DROP?
- Distribution Options: Can a member elect one optional form of benefit for the regular pension and a different form for the converted extra pension from the DROP account?

DROP ILLUSTRATIONS

The tables on the following pages provide illustrations of the impact of DROP participation for three different participant ages at election. Results for other FAS and service combinations would be proportional to those shown.

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DROP BENEFIT ILLUSTRATION A

ASSUMPTIONS			
Service at DROP	30 years	Annual Pay Increases	5%
Age at DROP	55	DROP Interest Credit	8%
Final Average Salary (FAS) at DROP	\$30,000	DROP Participation	5 years

Age BOY	Actual FAS	Development of DROP Account				Potential DROP Annuity BOY	Accrued Pension No DROP
		Balance BOY	Additions	Interest Credits	Balance EOY		
55	\$30,000	\$ 0	\$15,750	\$ 630	\$16,380	\$ 0	\$15,750
56	31,500	16,380	15,750	1,940	34,070	1,510	17,089
57	33,075	34,070	15,750	3,356	53,176	3,181	18,522
58	34,729	53,176	15,750	4,884	73,810	5,032	20,056
59	36,465	73,810	15,750	6,535	96,095	7,084	21,697
60	38,288	96,095		-	-	9,361	23,452

	Benefit at Age 60	
	Life Annuity	Lump Sum
Without DROP	\$23,452	\$ 0
With DROP		
- no lump sum	25,111	0
- lump sum	15,750	96,095

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DROP BENEFIT ILLUSTRATION B

ASSUMPTIONS			
Service at DROP	20 years	Annual Pay Increases	5%
Age at DROP	60	DROP Interest Credit	8%
Final Average Salary (FAS) at DROP	\$30,000	DROP Participation	5 years

Age BOY	Actual FAS	Development of DROP Account					Accrued Pension No DROP
		Balance BOY	Additions	Interest Credits	Balance EOY	Potential DROP Annuity BOY	
60	\$30,000	\$ 0	\$10,500	\$ 420	\$10,920	\$ 0	\$10,500
61	31,500	10,920	10,500	1,294	22,714	1,081	11,576
62	33,075	22,714	10,500	2,237	35,451	2,285	12,734
63	34,729	35,451	10,500	3,256	49,207	3,628	13,978
64	36,465	49,207	10,500	4,357	64,064	5,128	15,315
65	38,288	64,064		-		6,803	16,751

	Benefit at Age 65	
	Life Annuity	Lump Sum
Without DROP	\$16,751	\$ 0
With DROP		
- no lump sum	17,303	0
- lump sum	10,500	64,064

DROP BENEFIT ILLUSTRATION C

ASSUMPTIONS			
Service at DROP	25 years	Annual Pay Increases	5%
Age at DROP	65	DROP Interest Credit	8%
Final Average Salary (FAS) at DROP	\$30,000	DROP Participation	3 years

Age BOY	Actual FAS	Development of DROP Account					Accrued Pension No DROP
		Balance BOY	Additions	Interest Credits	Balance EOY	Potential DROP Annuity BOY	
65	\$30,000	\$ 0	\$13,125	\$ 525	\$13,650	\$ 0	\$13,125
66	31,500	13,650	13,125	1,617	28,392	1,478	14,333
67	33,075	28,392	13,125	2,796	44,313	3,138	15,628
68	34,729	44,313				5,002	17,017

	Benefit at Age 68	
	Life Annuity	Lump Sum
Without DROP	\$17,017	\$ 0
With DROP		
- no lump sum	18,127	0
- lump sum	13,125	44,313

FINANCIAL IMPACT ON KPERS

As can be seen from the previous tables, individuals would be better off participating in the DROP under the assumptions utilized. It should come as no surprise that those extra benefits being paid out increase the cost to employers. The actual increase is dependent upon the number and demographics of those who elect DROP participation.

As a worst case scenario, M&R determined the cost impact on KPERS if all active members retired when first eligible for an unreduced service retirement benefit, the de facto result if all eligible members elected the DROP. The table below presents some key comparisons as of June 30, 1998 (\$ amounts in millions).

	KPERS State/School Finances	
	Current	With DROP
Liabilities:		
Actuarial Accrued Liability	\$6,729	\$7,295
Actuarial Value of Assets	<u>5,587</u>	<u>5,587</u>
Unfunded Actuarial Accrued Liability (UAAL)	\$1,142	\$1,708
Contributions (as % of payroll):		
Employer Normal Cost	3.45%	4.28
UAAL Amortization Payment	<u>2.10</u>	<u>3.10</u>
Total Employer Rate	5.55%	7.38%
Number of Active Members	99,397	93,896
Covered Payroll	\$2,854.8	\$2,652.4

Again, this is a worst case scenario and the difference is compounded by assuming all the “pent-up demand” is met in one year. However, on this basis the annual cost to employers would be the difference in dollar contribution amounts: 7.38% x \$2,652.4 million less 5.55% x \$2,854.8 million, or \$37.3 million.

There are two changes that can be made to the DROP structure in an attempt to produce cost neutrality. One is to reduce the interest rate credited to the DROP account. The other, which has a larger impact, is to reduce the amount credited to the account to something less than 100% of the member’s frozen benefit. Typically reductions of 20%-30% are necessary to create cost neutrality.

APPENDIX A

**MICHIGAN ENABLING LEGISLATION
(DC PLAN)**

PUBLIC AND LOCAL ACTS

OF

THE LEGISLATURE

OF THE

STATE OF MICHIGAN

PASSED AT THE REGULAR SESSION OF 1996

Also Other Matters Required By Law
To Be Published With The Public Acts



Compiled And Published By The
LEGISLATIVE SERVICE BUREAU

Under The Direction Of The
LEGISLATIVE COUNCIL

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Conditional effective date.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 6207.
- (b) House Bill No. 6229.
- (c) House Bill No. 6230.
- (d) Senate Bill No. 248.

Approved December 23, 1996.

Filed with Secretary of State December 27, 1996.

Compiler's note: The bills referred to in Section 3 were enacted into law as follows:
 House Bill No. 6207 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 489, Eff. Mar. 31, 1997.
 House Bill No. 6229 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 487, Eff. Mar. 31, 1997.
 House Bill No. 6230 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 488, Eff. Mar. 31, 1997.
 Senate Bill No. 248 was filed with the Secretary of State January 13, 1997, and became P.A. 1996, No. 523, Eff. Mar. 31, 1997.

[No. 487]

(HB 6229)

AN ACT to amend the title and sections 1e, 1i, 2, 11, 13, and 20d of Act No. 240 of the Public Acts of 1943, entitled as amended "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 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 agencies; and to prescribe penalties and provide remedies," sections 1e and 1i as added and sections 11 and 20d as amended by Act No. 176 of the Public Acts of 1995 and section 13 as amended by Act No. 389 of the Public Acts of 1996, being sections 38.1e, 38.1i, 38.2, 38.11, 38.13, and 38.20d of the Michigan Compiled Laws; and to add sections 19f, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67a, 68, and 69.

The People of the State of Michigan enact:

Title and sections amended and added; state employees' retirement act.

Section 1. The title and sections 1e, 1i, 2, 11, 13, and 20d of Act No. 240 of the Public Acts of 1943, sections 1e and 1i as added and sections 11 and 20d as amended by Act No. 176 of the Public Acts of 1995 and section 13 as amended by Act No. 389 of the Public Acts of 1996, being sections 38.1e, 38.1i, 38.2, 38.11, 38.13, and 38.20d of the Michigan Compiled Laws, are amended and sections 19f, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67a, 68, and 69 are added to read as follows:

TITLE

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; and to prescribe penalties and provide remedies.

38.1e Definitions; F to I. [M.S.A. 3.981(1e)]

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. 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 shall not be included in final average compensation.

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

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

38.1i Definitions; S to T. [M.S.A. 3.981(1i)]

Sec. 1i. (1) "Service" means service rendered to this state by an elected or appointed state official or employee of this state. Credit for service shall be determined by appropriate rules and regulations of the retirement board, but not more than 1 year of service shall be creditable for all service in 1 calendar year. The retirement board shall not allow credit for service for any period of more than 1 month in any 1 calendar year during which the employee was absent without pay. However, full service credit shall be given for a period during which an employee is on leave of absence and is receiving worker's compensation benefits as the result of a duty-incurred disability. Full service credit shall also be given to an employee for required 1-day layoffs, for voluntary or involuntary participation in pay reduction plan A, pay reduction plan B, or both, in effect during the fiscal years ending on and after September 30, 1981, and for required and designated temporary layoffs.

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

(3) "Tier 1" means the retirement plan available to a member under this act who was first employed and entered upon the payroll before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

(4) "Tier 2" means the retirement plan established pursuant to section 401(k) of the internal revenue code that is available to qualified participants under sections 50 to 69.

38.2 State employees' retirement system; creation; administration by retirement board; rules. [M.S.A. 3.981(2)]

Sec. 2. (1) A state employees' retirement system is created for the employees of the state of Michigan.

(2) Except as otherwise provided in this section, the administration and management of the retirement system and the responsibility for making effective the provisions of this act are vested in a retirement board. Except as otherwise provided in this section, the retirement board may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the implementation and administration of this act.

(3) Subsection (2) does not apply to the Tier 2 retirement plan. The retirement board shall not promulgate rules for the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan.

38.11 Employees' savings fund, employer's accumulation fund, annuity reserve fund, pension reserve fund, income fund, expense fund, and health insurance reserve fund; creation; description of funds as reference to accounting records of retirement system.
[M.S.A. 3.981(11)]

Sec. 11. (1) There is created the employees' savings fund, employer's accumulation fund, annuity reserve fund, pension reserve fund, income fund, expense fund, and health insurance reserve fund.

(2) The employees' savings fund is the fund in which shall be accumulated at regular interest the contributions to the retirement system deducted from the compensation of members. The retirement board shall provide for the maintenance of an individual account for each member that shows the amount of the member's contributions together with interest on those contributions. The accumulated contributions of a member returned to the member upon his or her withdrawal from service, or paid to the member's estate or designated beneficiary in the event of the member's death, as provided in this act, shall be paid from the employees' savings fund. Any accumulated contributions not claimed by a member or the member's legal representative as provided in this act within 5 years after the member's separation from state service shall be transferred from the employees' savings fund to the income fund. The accumulated contributions of a member, upon the member's retirement, shall be transferred from the employees' savings fund to the pension reserve fund.

(3) The employer's accumulation fund is the fund in which shall be accumulated the reserves derived from money provided by this state for the payment of all retirement allowances to be payable to retirants and beneficiaries as provided in this act. The amounts paid by this state shall be credited to the employer's accumulation fund. Upon the retirement of a member, or upon the member's death, if a beneficiary is entitled to a retirement allowance payable from funds of the retirement system, the difference between the reserve for the retirement allowance to be paid on account of the member's retirement or death and the member's accumulated contributions standing to his or her credit in the employees' savings fund at the time of his or her retirement or death shall be transferred from the employer's accumulation fund to the pension reserve fund. If, in any year, the pension reserve fund is insufficient to cover the reserves for retirement allowances and other benefits being paid from the fund, the amount or amounts of the insufficiency or insufficiencies shall be transferred from the employer's accumulation fund to the pension reserve fund.

(4) The annuity reserve fund is the fund from which shall be paid all annuities, or benefits in lieu of annuities, because of which reserves have been transferred from the employees' savings fund to the annuity reserve fund. Upon the adoption of this act, the balance in the annuity reserve fund shall be transferred to the pension reserve fund, and

the annuities heretofore payable from the annuity reserve fund shall thereafter become payable from the pension reserve fund.

(5) The pension reserve fund is the fund from which shall be paid all retirement allowances and benefits in lieu of pensions, as provided in this act. For a disability retiree returned to active service with this state, his or her pension reserve, computed as of the date of return, shall be transferred from the pension reserve fund to the employees' savings fund and the employer's accumulation fund in the proportion that this reserve, as of the date of his or her retirement, was transferred to the pension reserve fund from the employees' savings fund and from the employer's accumulation fund. The amounts transferred to the employees' savings fund under this section shall be credited to the member's individual account in the fund.

(6) An income fund is created for the purpose of crediting regular interest on the amounts in the various other funds of the retirement system with the exception of the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. Transfers for special requirements shall be made only when the amount in the income fund exceeds the ordinary requirements of the fund as evidenced by a resolution of the retirement board recorded in its minutes. The retirement board shall annually allow regular interest for the preceding year to each of the funds enumerated in subsections (2), (3), (4), (5), and (8), and the amount allowed under this subsection shall be due and payable to each of these funds and shall be annually credited to the funds by the retirement board and paid from the income fund. However, interest on contributions from members within a calendar year shall begin on the first day of the next calendar year, and shall be credited at the end of the calendar year. All income, interest, and dividends derived from the deposits and investments authorized by this act shall be paid into the income fund. The retirement board is authorized to accept gifts and bequests. Any funds that come into the possession of the retirement system as a gift or bequest, or any funds that may be transferred from the employees' savings fund by reason of lack of claimant, or because of a surplus in any fund created by this act, or any other money the disposition of which is not otherwise provided for in this act shall be credited to the income fund.

(7) The expense fund is the fund from which shall be paid the expenses of the administration of this act, exclusive of amounts payable as retirement allowances and other benefits provided for in this act. The legislature shall appropriate the funds necessary to defray and cover the expenses of administering this act.

(8) The health insurance reserve fund is the fund into which appropriations made by the legislature, subscriber co-payments, and payments by the retirement system under section 68 for health, dental, and vision insurance premiums are paid. Health, dental, and vision insurance premiums payable pursuant to sections 20d and 68 shall be paid from the health insurance reserve fund.

(9) The description of the various funds in this section shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of assets credited to the various funds of the retirement system.

38.13 Membership in retirement system. [M.S.A. 3.981(13)]

Sec. 13. (1) Except as otherwise provided in this act, membership in the retirement system consists of state employees occupying permanent positions in the state civil service. All state employees except those specifically excluded by law and those who are members or eligible to be members of other statutory retirement systems in this state, shall become members of the retirement system. The employees may use service previously

performed as an employee of this state in meeting the service requirements for the retirement allowances and death benefits provided by the retirement system. However, the prior service shall not be used in computing the amount of a retirement allowance to be paid by the retirement system unless the employee pays to the retirement system the amount the employee's contributions would have been had the employee become a member immediately upon employment by the state with interest compounded annually at the regular rate from a date 1 year after the date of employment by this state to the date of payment. A person who draws compensation as a state employee of a political subdivision of this state is eligible for the benefits provided by this act to the extent of the person's compensation paid by this state. An individual who meets the requirements of section 44a is a member of the retirement system.

(2) Elected or appointed state officials may elect not to become or continue as members of the retirement system by filing written notice with the retirement board. An appointed state official who is a member of a state board, commission, or council and who receives a per diem rate in his or her capacity as a member of the board, commission, or council is excluded from membership in the retirement system for the service rendered in his or her capacity as a member of the board, commission, or council. Service performed by an elected or appointed official during the time the official elects not to participate shall not be used in meeting the service requirement or in computing the amount of retirement allowance to be paid by the retirement system. A member who elects not to participate shall be refunded all contributions made before the election.

(3) Membership in the retirement system does not include any of the following:

(a) A person who is a contributing member in the public school employees' retirement system provided for in the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1408 of the Michigan Compiled Laws.

(b) A person who is a contributing member in the Michigan judges retirement system provided for in the judges retirement act of 1992, Act No. 234 of the Public Acts of 1992, being sections 38.2101 to 38.2608 of the Michigan Compiled Laws.

(c) A person who comes within the Michigan state police retirement system provided for in the state police retirement act of 1986, Act No. 182 of the Public Acts of 1986, being sections 38.1601 to 38.1648 of the Michigan Compiled Laws.

(d) An individual who is first employed and entered upon the payroll on or after March 31, 1997 for employment for which the individual would have been eligible for membership under this section before March 31, 1997. An individual described in this subdivision is eligible to be a qualified participant in Tier 2 subject to sections 50 to 69.

(e) An individual who elects to terminate membership under section 50 and who, but for that election, would otherwise be eligible for membership in Tier 1 under this section.

(4) A person who is hired in state classified or unclassified service after June 30, 1974, who is first employed and entered upon the payroll before March 31, 1997, and who possesses a Michigan teaching certificate shall be a member of this retirement system. After June 30, 1974, but before March 31, 1997, a person who returns to state employment in the classified or unclassified service who previously was a contributing member of the Michigan public school employees' retirement system shall have the person's accumulated contributions and service transferred to this retirement system, or having withdrawn the contributions, may pay into the retirement system the amount withdrawn together with regular interest and have credit restored as provided for in section 16. On and after March 31, 1997, an individual described in this subsection who returns to state service shall make an irrevocable election to remain in Tier 1 or to become a qualified participant of Tier 2 in the manner prescribed in section 50.

(5) A person, not regularly employed by this state, who is employed through participation in 1 or more of the following programs, shall not be a member of the retirement system and shall not receive service credit for the employment:

(a) A program authorized, undertaken, and financed pursuant to the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839.

(b) A summer youth employment program established pursuant to the Michigan youth corps act, Act No. 69 of the Public Acts of 1983, being sections 409.221 to 409.229 of the Michigan Compiled Laws.

(c) A program established pursuant to the job training partnership act, Public Law 97-300, 96 Stat. 1322.

(d) A program established pursuant to the Michigan opportunity and skills training program, first established under sections 12 to 23 of Act No. 259 of the Public Acts of 1983.

(e) A program established pursuant to the Michigan community service corps program, first established under sections 25 to 35 of Act No. 259 of the Public Acts of 1983.

(6) A person, not regularly employed by this state, who is employed to administer a program described in subsection (5) shall not be a member of the retirement system and shall not receive service credit for the employment.

(7) If a person described in subsection (5)(a) later becomes a member of this retirement system within 12 months after the date of termination as a participant in a transitional public employment program, service credit shall be given for employment which is excluded in subsection (5) for purposes of determining a retirement allowance upon the payment by the person's employer under subsection (5) from funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, as funds permit, to the retirement system of the contributions, plus regular interest, the employer would have paid had the employment been rendered in a position covered by this act. During the person's employment in the transitional public employment program, the person's employer shall place in reserve a reasonable but not necessarily an actuarially determined amount equal to the contributions that the employer would have paid to the retirement system for those employees in the transitional public employment program as if they were members under this act, but only for that number of employees that the employer determined would move from the transitional public employment program into positions covered by this act. If the funds provided under the comprehensive employment and training act of 1973, former Public Law 93-203, 87 Stat. 839, are insufficient, the remainder of the employer contributions shall be paid by the person's current employer.

38.19f Retirement and receipt of retirement allowance; requirements; accumulated sick leave; request to extend effective date of retirement; calculation; state contract prohibited. [M.S.A. 3.981(19f)]

Sec. 19f. (1) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member meets 1 or more of the following:

(i) The member is 60 years of age or older and has 10 or more years of credited service.

(ii) The member is 55 years of age or older and has 15 or more years of credited service.

(iii) The member is 50 years of age or older and has 25 or more years of credited service.

(b) The member was employed by this state for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment or was an employee of the state judicial council on September 30, 1996 as defined in section 44a is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after March 1, 1997, but not later than April 30, 1997, stating a date, which date shall be at least 30 days after the execution and filing of the application but not later than June 1, 1997, on which he or she desires to retire. This subdivision is subject to subsection (4).

(d) The member is not employed in a covered position as defined in section 45.

(e) The member is not a conservation officer as described in section 48.

(2) Notwithstanding section 19, a member may retire and receive a retirement allowance computed under this section if the member meets all of the following requirements:

(a) On the effective date of his or her retirement, the member meets 1 or more of the following:

(i) The member is 60 years of age or older and has 10 or more years of credited service.

(ii) The member is 55 years of age or older and has 15 or more years of credited service.

(iii) The member is 50 years of age or older and has 25 or more years of credited service.

(b) The member was employed by the legislature for the 6-month period ending on the effective date of his or her retirement. A member who was restored to active service during that 6-month period under section 33 or a member who is on layoff status from state employment is considered to have met the employment requirement of this subdivision.

(c) The member files a written application with the retirement board, on or after December 15, 1996, but not later than April 30, 1997, stating a date, which date shall be at least 30 days after the execution and filing of the application but not later than June 1, 1997, on which he or she desires to retire.

(3) Any amount that a member retiring under this section would otherwise be entitled to receive in a lump sum at retirement on account of accumulated sick leave shall be paid in 60 consecutive equal monthly installments.

(4) The director of a principal department may request that the effective date of retirement under subsection (1) of a member employed by that department be extended to a date not later than June 1, 1998. To make such a request, the director shall submit a written request along with the written concurrence of the member to the department of management and budget on or before April 30, 1997. Upon receipt of the written request and concurrence, the department of management and budget may extend the effective date of retirement of a member otherwise eligible to retire under subsection (1) to a date not later than June 1, 1998.

(5) Upon his or her retirement as provided in this section, 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 1-3/4% of his or her final average compensation. Except for the calculation provided in this subsection, the member's retirement allowance is subject to section 20. The member's retirement allowance is not subject to reduction pursuant to section 19(2).

(6) An employee who retires under this section may not be hired under contract by the state for a period of 2 years after the date of separation.

38.20d Hospitalization, medical, dental, and vision coverage insurance premium; payment by retirement board; health insurance premiums. [M.S.A. 3.981(20d)]

Sec. 20d. (1) On and after July 1, 1974, hospitalization and medical coverage insurance premium payable by any retirant or his or her beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department of management and budget shall be paid by the retirement board from the health insurance reserve fund created in section 11. The amount payable shall be in the same proportion of premium payable by the state of Michigan for the classified employees occupying positions in the state civil service. The hospitalization and medical insurance premium payable shall be paid from appropriations made for this purpose to the health insurance reserve fund sufficient to cover the premium payment needed to be made.

(2) Effective January 1, 1988, 90% of the premium payable by a retirant or the retirant's beneficiary and his or her dependents for dental coverage or vision coverage, or both, under any group plan authorized by the Michigan civil service commission and the department of management and budget shall be paid by the retirement board from the health insurance reserve fund created in section 11.

(3) On and after March 31, 1997, the retirement system shall also pay health insurance premiums described in this section in the manner prescribed in section 68.

38.50 Election to terminate participation in Tier 1 and to participate in Tier 2; irrevocability; termination of employment; reemployment of deferred or former nonvested member; method of election; signature of spouse; waiver; election subject to eligible domestic relations order act; effect of disqualification notice from United States internal revenue service. [M.S.A. 3.981(50)]

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 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. 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 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, Act No. 46 of the Public Acts of 1991, being sections 38.1701 to 38.1711 of the Michigan Compiled Laws.

(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, 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 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.

38.51 Transfer of lump sum amount. [M.S.A. 3.981(51)]

Sec. 51. (1) For a member who elects to terminate membership in Tier 1 under section 50(1), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the qualified participant's account in Tier 2 on or before September 30, 1998. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight May 31, 1998.

(b) For a member who is vested under section 20(4) or (5) as of 12 midnight on May 31, 1998, the excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final average compensation as of 12 midnight on May 31, 1998. The actuarial present value shall be computed as of 12 midnight May 31, 1998 and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight May 31, 1998. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight May 31, 1998:

(A) Age 60.

(B) Age 55, if the member's estimated credited service equals or exceeds 30 years.

(C) The age of the member if section 19(5), 46, or 48 applies.

(c) Interest on any amounts determined in subdivisions (a) and (b), from June 1, 1998 to the date of the transfer, based upon 8% annual interest, compounded annually.

(2) For each member who elects to terminate membership in the retirement system under section 50(1), the retirement system shall recompute the amount transferred under subsection (1) not later than November 30, 1998 based upon the member's actual credited service and actual final average compensation as of 12 midnight May 31, 1998. If the

recomputed amount differs from the amount transferred under subsection (1) by \$10.00 or more, not later than December 15, 1998, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight May 31, 1998 to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (1), based upon 8% effective annual interest, compounded annually.

(3) For a member who elects to terminate membership in this retirement system under section 50(2), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the former qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's termination of employment. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the day immediately preceding the date of the termination of employment.

(b) The excess, if any, of the actuarial present value of the member's accumulated benefit obligation, over the amount specified in subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated credited service and estimated final average compensation as of 12 midnight on the day immediately preceding the date of the termination of employment. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent annual actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the day immediately preceding the date of the termination of employment. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the day immediately preceding the date of the termination of employment:

(A) Age 60.

(B) Age 55, if the member's estimated credited service equals or exceeds 30 years.

(C) The age of the member if section 19(5), 46, or 48 applies.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the day immediately following the date described in subdivision (a) to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(4) For each member who elects to terminate membership in Tier 1 under section 50(2), the retirement system shall recompute the amount transferred under subsection (3) not later than the expiration of 90 days after the transfer occurs under subsection (3) based upon the member's actual credited service and actual final average compensation as

of 12 midnight on the day immediately preceding the date of the termination of employment. If the recomputed amount differs from the amount transferred under subsection (3) by \$10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the former qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the day immediately preceding the date of the termination of employment to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the former qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (3), based upon 8% effective annual interest, compounded annually.

(5) For a deferred member who elects to terminate membership in this retirement system under section 50(3), the retirement system shall direct the state treasurer to transfer a lump sum amount from the appropriate fund created under section 11 to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The deferred member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) The excess, if any, of the actuarial present value of the deferred member's accumulated benefit obligation, over the amount specified in subdivision (a), from the employer's accumulation fund. Except as provided in subsection (7), for the purposes of this subsection, the present value of the deferred member's accumulated benefit obligation is based upon the deferred member's estimated credited service and estimated final average compensation as of 12 midnight on the last day of the payroll period that includes the date of the election. The actuarial present value shall be computed as of 12 midnight on that date and shall be based on the following:

(i) Eight percent effective annual interest, compounded annually.

(ii) A 50% male and 50% female gender neutral blend of the mortality tables used to project retirant longevity in the most recent annual actuarial valuation report.

(iii) A benefit commencement age, based upon the member's estimated credited service as of 12 midnight on the last day of the payroll period that includes the date of the election. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of 12 midnight on the last day of the payroll period that includes the date of the election:

(A) Age 60.

(B) Age 55, if the deferred member's estimated credited service equals or exceeds 30 years.

(C) The age of the deferred member if section 19(5), 46, or 48 applies.

(c) Interest on any amounts determined in subdivisions (a) and (b), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(6) For each deferred member who elects to terminate membership in Tier 1 under section 50(3), the retirement system shall recompute the amount transferred under

subsection (5) not later than the expiration of 90 days after the transfer occurs under subsection (5) based upon the deferred member's actual credited service and actual final average compensation as of 12 midnight on the last day of the payroll period that includes the date of the election. If the recomputed amount differs from the amount transferred under subsection (5) by \$10.00 or more, the retirement system shall do all of the following:

(a) Direct the state treasurer to transfer from the employer's accumulation fund to the qualified participant's account in Tier 2 the excess, if any, of the recomputed amount over the previously transferred amount together with interest from 12 midnight on the last day of the payroll period that includes the date of the election to the date of the transfer under this subsection, based upon 8% effective annual interest, compounded annually.

(b) Direct the state treasurer to transfer from the qualified participant's account in Tier 2 to the employer's accumulation fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest, from the date of the transfer made under subsection (6), based upon 8% effective annual interest, compounded annually.

(7) For the purposes of subsections (1) to (6), the calculation of estimated and actual present value of the member's or deferred member's accumulated benefit obligation shall be based upon methods adopted by the department of management and budget and the retirement system's actuary in consultation with the retirement board. The retirement system shall utilize the same actuarial valuation report used to calculate the amount transferred under subsection (1), (3), or (5) when making the recomputation required under subsection (2), (4), or (6). Estimated and actual final average compensation shall be determined as provided in section 1e as of 12 midnight on the date the member or deferred member ceases to be a member of Tier 1 under section 50.

(8) For a former nonvested member who elects to terminate membership in Tier 1 under section 50(3) and who has accumulated contributions standing to his or her credit in the employees' savings fund, the retirement system shall direct the state treasurer to transfer a lump sum amount from the employees' savings fund created under section 11 to the qualified participant's account in Tier 2 on or before the expiration of 60 days after the date of the individual's election to terminate membership. The retirement system shall calculate the amount to be transferred, which shall be equal to the sum of the following:

(a) The former nonvested member's accumulated contributions, if any, from the employees' savings fund as of 12 midnight on the last day of the payroll period that includes the date of the election.

(b) Interest on any amounts determined in subdivision (a), from the first day of the payroll period immediately following the date of the election to the date of the transfer, based upon 8% effective annual interest, compounded annually.

(9) If the department of 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.

38.52 Calculation of accrued cost savings for each fiscal year.

[M.S.A. 3.981(52)]

Sec. 52. After consulting the retirement system's actuary, the department of management and budget shall calculate for each fiscal year any cost savings that have accrued to this state as a result of the implementation of the amendatory act that added this section over the costs that would have been incurred by this state to fund this retirement system had the amendatory act that added this section not been implemented. The total amount of such cost savings shall be submitted in the executive budget to the

legislature for appropriation in the next succeeding state fiscal year to the health insurance reserve fund created by section 11(8). Any amount appropriated pursuant to this section and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under section 20d is 100% funded.

38.53 Meanings of words and phrases; definitions; A to C. [M.S.A. 3.981(53)]

Sec. 53. (1) For the purposes of this section and sections 54 to 69, the words and phrases defined in this section and sections 54 to 69 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(3) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer. Compensation includes only wages, tips, and other compensation as reported by the employer on the participant's federal form W-2, wage and tax statement.

38.54 Definitions; E to H. [M.S.A. 3.981(54)]

Sec. 54. (1) "Employer" means this state or, if a qualified participant is not employed by this state but is a participant in Tier 2 by virtue of his or her employment, the employer that pays his or her compensation.

(2) "Former qualified participant" means an individual who was a qualified participant and who terminates the employment upon which his or her participation is based for any reason.

(3) "Health benefit dependent" means the qualified or former qualified participant's spouse, if any, and an unmarried child who is considered a dependent of the qualified or former qualified participant under section 152 of the internal revenue code, if any.

38.55 Definitions; Q to S. [M.S.A. 3.981(55)]

Sec. 55. (1) "Qualified participant" means an individual who is a participant of Tier 2 and who meets 1 of the following requirements:

(a) An individual who 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) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 50.

(2) "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.

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

38.56 State treasurer; powers and duties. [M.S.A. 3.981(56)]

Sec. 56. (1) The state treasurer shall administer Tier 2 and shall invest the assets of Tier 2. The state treasurer is the fiduciary and trustee of Tier 2. The state treasurer may appoint an advisory board to assist the state treasurer in carrying out his or her duties as fiduciary and trustee.

(2) The state treasurer shall determine the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(3) The state treasurer has the exclusive authority and responsibility to employ or contract with personnel and for services that the state treasurer determines necessary for the proper administration of and investment of assets of Tier 2, including but not limited to managerial, professional, legal, clerical, technical, and administrative personnel or services.

38.57 Hearing. [M.S.A. 3.981(57)]

Sec. 57. (1) A qualified participant, former qualified participant, health benefit dependent, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the state treasurer shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An individual may be represented by counsel or other duly authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of Act No. 306 of the Public Acts of 1969, being sections 24.224 to 24.264 and 24.291 to 24.292 of the Michigan Compiled Laws, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

38.58 Investment of employer and employee contributions and earnings; direction by participant. [M.S.A. 3.981(58)]

Sec. 58. Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the state treasurer. The limitations on the percentage of total assets for investments provided in Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, do not apply to Tier 2.

38.59 Payment of administrative expenses. [M.S.A. 3.981(59)]

Sec. 59. The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the state treasurer.

38.60 Other public sector retirement benefits plan; participation. [M.S.A. 3.981(60)]

Sec. 60. A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the state treasurer, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code.

38.61 Election by elected or appointed official. [M.S.A. 3.981(61)]

Sec. 61. An elected or appointed official who is first elected or appointed on or after March 31, 1997 may irrevocably elect not to become a qualified participant of Tier 2 or may irrevocably elect to discontinue participation in Tier 2 by filing written notice of the election with the state treasurer. Upon receipt of the election, his or her employer shall not contribute any percentage of compensation under section 63 for the official who makes either election.

38.62 Transfer of amount; crediting and charging participant account. [M.S.A. 3.981(62)]

Sec. 62. (1) The state treasurer shall promptly credit the Tier 2 account of a qualified participant or former qualified participant who makes an election under section 50 to terminate membership in Tier 1 with any amount transferred from Tier 1 pursuant to section 51.

(2) Not later than 30 days after receipt of a recomputed amount under section 51(2), (4), or (6), the state treasurer shall charge the participant's Tier 2 account for any amount of excess transfers under section 51(1), (3), or (5) and transfer that amount to the appropriate fund in Tier 1. The state treasurer may determine which investment choice or choices within a participant's Tier 2 account will be used for this purpose.

38.63 Contributions by employer and participant. [M.S.A. 3.981(63)]

Sec. 63. (1) This section is subject to the vesting requirements of section 64.

(2) A qualified participant's employer shall contribute to the qualified participant's account in Tier 2 an amount equal to 4% of the qualified participant's compensation.

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

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

38.64 Vesting requirements. [M.S.A. 3.981(64)]

Sec. 64. (1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

- (a) Upon completion of 2 years of service, 50%.
- (b) Upon completion of 3 years of service, 75%.
- (c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in 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 and was not a member, deferred member, or former nonvested member of Tier 1.

(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.

38.65 Crediting years of service accrued. [M.S.A. 3.981(65)]

Sec. 65. A qualified participant who was a member, deferred member, or former nonvested member of Tier 1 who makes an election to participate in Tier 2 pursuant to section 50, 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.

38.66 Refund beneficiary. [M.S.A. 3.981(66)]

Sec. 66. A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the state treasurer. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the state treasurer may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

38.67 Distributions of accumulated balance. [M.S.A. 3.981(67)]

Sec. 67. (1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the state treasurer, the state treasurer, in a lump sum distribution, shall distribute the accumulated balance to the legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

- (a) A lump sum distribution to the recipient.
- (b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
- (c) Periodic distributions, as authorized by the state treasurer.
- (d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

38.67a Duty disability retirement allowance; supplemental benefit; health insurance coverage. [M.S.A. 3.981(67a)]

Sec. 67a. (1) Upon the application of a qualified participant, his or her department head, or the state personnel director, a qualified participant who becomes totally incapacitated for duty in the service of this state without willful negligence on his or her part, by reason of a personal injury or disease, which the retirement board finds to have occurred as the natural and proximate result of the qualified participant's actual performance of duty in the service of this state, shall be granted a supplemental benefit equivalent to the amount provided for 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 upon becoming a former qualified participant pursuant to section 67.

(2) 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.

(3) 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) or (2), 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.

(4) Upon the application of a qualified participant, his or her department head, or the state personnel director, a qualified participant who has been a state employee for 10 years or more and who becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of duty to this state shall be granted a supplemental benefit equivalent to the amount provided for in section 25 as if the former qualified participant had retired under section 24, 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.

(5) 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 upon becoming a former qualified participant pursuant to section 67.

(6) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a disability retirement allowance pursuant to subsection (4) or (5), 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.

38.68 Health insurance coverage. [M.S.A. 3.981(68)]

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

(a) The former qualified participant is vested in health benefits under section 64(2).

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

(2) A former qualified participant who is eligible to elect health insurance coverage under subsection (1) may elect health insurance coverage in a health benefit plan or plans as authorized by section 20d, or in another plan as provided in subsection (6). 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) Except as otherwise provided in subsection (6), an individual who elects health insurance coverage under this section shall become a member of a health insurance coverage group authorized pursuant to section 20d.

(4) For a former qualified participant who is eligible to elect health insurance coverage under subsection (1) and who is vested in those benefits under section 64(2)(a), and for his or her health benefit dependents, this state shall pay a portion of the health insurance premium as calculated under this subsection on a cash disbursement method. An individual described in this subsection who elects health insurance coverage under this section shall pay to the retirement system the remaining portion of the health insurance coverage premium not paid by this state under this subsection. 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, and shall not exceed 90% of the payments 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.

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

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

(7) If the department of 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.

38.69 Exemptions from taxation or other operations of law; distributions subject to forfeiture or domestic relations order; limitation; right of set off to recover overpayments; satisfaction of claims arising from embezzlement or fraud; correction of errors in records and actions. [M.S.A. 3.981(69)]

Sec. 69. (1) Distributions from employer contributions made pursuant to section 63(2) and (3) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 63(3) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and shall be unassignable except as otherwise provided in this act.

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

(3) The right of a qualified participant or former qualified participant to a distribution described in subsection (1) is subject to an award by a court pursuant to section 18 of chapter 84 of the Revised Statutes of 1846, being section 552.18 of the Michigan Compiled Laws; an eligible domestic relations order under the eligible domestic relations order act, Act No. 46 of the Public Acts of 1991, being sections 38.1701 to 38.1711 of the Michigan Compiled Laws; and to any other domestic relations order of a court pertaining to alimony or child support.

(4) If an award or order described in subsection (3) requires Tier 2 to withhold payment of a distribution described in subsection (1) or requires Tier 2 to make payment or requires the individual to request that Tier 2 make payment of a distribution described in subsection (1), for the purpose of meeting the individual's obligations to a spouse, former spouse, or child, as provided in subsection (3), the withholding or payment provisions of the award or order are effective only against such amounts as they become due and payable to the individual receiving the distribution, unless otherwise provided in an eligible domestic relations order under Act No. 46 of the Public Acts of 1991. The limitation contained in this subsection does not apply to the accumulated employee contributions of a former qualified participant who has terminated employment before acquiring a vested status in Tier 2 pursuant to this act.

(5) The state treasurer has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

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

Severability of section or part of section.

Section 2. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety.

Conditional effective date.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) House Bill No. 6206.
- (b) House Bill No. 6207.
- (c) House Bill No. 6230.

Approved December 23, 1996.

Filed with Secretary of State December 27, 1996.

Compiler's note: The bills referred to in Section 3 were enacted into law as follows:

House Bill No. 6206 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 486, Eff. Mar. 31, 1997.
House Bill No. 6207 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 489, Eff. Mar. 31, 1997.
House Bill No. 6230 was filed with the Secretary of State December 27, 1996, and became P.A. 1996, No. 488, Eff. Mar. 31, 1997.

APPENDIX B

**FLORIDA ENABLING LEGISLATION
(DROP)**

CHAPTER 98-18

Committee Substitute for
Committee Substitute for House Bill No. 3131

An act relating to the Florida Retirement System; amending s. 121.091, F.S.; revising criteria, limitations, and restrictions for eligibility, participation, and benefits payable under the Deferred Retirement Option Program; providing conditions for payment of annual leave; amending s. 121.1122, F.S., relating to provisions for purchase of retirement credit for in-state service in accredited nonpublic schools and colleges; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (b), and (c) of subsection (13) of section 121.091, Florida Statutes, are amended to read:

121.091 Benefits payable under the system.—No benefits shall be paid under this section unless the member has terminated employment as provided in s. 121.021(39) and a proper application has been filed in the manner prescribed by the division.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the System Trust Fund on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. ~~Participation Employment~~ in the DROP does not guarantee employment for the specified period of DROP.

(a) Eligibility of member to participate in the DROP.—All active Florida Retirement System members in a regularly established position, and all active members of either the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122 which systems are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in the DROP provided that:

1. The member is not a renewed member of the Florida Retirement System under s. 121.122, or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2.1. Election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date or age, or for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains 57, or age 50 for Special Risk Class members. For a member who first reached normal retirement date or the deferred eligibility date described above age prior to the effective date of this section, election to participate shall be is made within 12 months of the effective date of this section. A member who fails to make an election within such 12-month limitation period shall forfeit all rights to participate in the DROP. The member shall advise his employer and the division in writing of the date on which the DROP shall begin. Such beginning date may be subsequent to the 12-month election period but must be within the 60-month limitation period as provided in subparagraph (b)1. When establishing eligibility of the member to participate in the DROP or the 60-month maximum participation period, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal retirement dates shall be eligible to elect to participate in DROP within 12 months after attaining normal retirement date in either class.

3.2. The retiring member's employer of a member electing to participate in the DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in the DROP begins and the date the member's employment and DROP participation will terminate.

4.3. Simultaneous employment of a participant by additional Florida Retirement System employers subsequent to the commencement of participation in the DROP shall be permissible provided such employers acknowledge in writing a DROP termination date no later than the participant's existing termination date or the 60-month limitation period as provided in subparagraph (b)1.

5. A DROP participant may change employers while participating in the DROP, subject to the following:

a. A change of employment must take place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation shall cease unless the employer verifies a continuation of the employment relationship for such participant pursuant to 121.021(39)(b).

b. Such participant and new employer shall notify the division on forms required by the division as to the identity of the new employer.

c. The new employer shall acknowledge, in writing, the participant's DROP termination date, which may be extended but not beyond the original 60-month period provided in subparagraph (b)1., shall acknowledge liability for any additional retirement contributions and interest required if the participant fails to timely terminate employment, and shall be subject to the adjustment required in sub-subparagraph (c)4.d.

(b) Participation in the DROP.—

1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months immediately following the date on which the member first reaches normal retirement age or date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a)2, ~~including a member who first reaches normal retirement age or date prior to the effective date of this section. Any member who has exceeded the 60-month limitation shall not be eligible to participate in the DROP. However, a member who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP, except a member of the Special Risk Class who has reached normal retirement date prior to the effective date of the DROP and whose total accrued value exceeds 75 percent of average final compensation as of his or her effective date of retirement shall be eligible to participate in the DROP for no more than 36 calendar months immediately following the effective date of the DROP.~~

2. Upon deciding to participate in the DROP, the member shall submit, on forms required by the division:

a. A written election to participate in the DROP;

b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. Such termination date shall be in a binding letter of resignation with the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of his employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant shall be a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. However, participation in the DROP does not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective and termination occurs as provided in s. 121.021(39).

~~4. A reemployed retiree with renewed membership is not eligible for DROP participation.~~

4.5. Elected officers shall be eligible to participate in the DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate in the DROP until the next

succeeding term in that office. Such elected officer who exercises this option may participate in the DROP for up to 60 calendar months or a period of no longer than such succeeding term of office, whichever is less.

b.a. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly, except, however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP shall be null and void as provided in subparagraph (c)4.d.

c.b. An elected officer who is dually employed and elects to participate in DROP shall be required to satisfy the definition of termination within the 60-month limitation period as provided in subparagraph 1. for the non-elected position and may continue employment as an elected officer as provided in s. 121.053. The elected officer will be enrolled as a renewed member in the Elected State and County Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.22, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(c) Benefits payable under the DROP.—

1. Effective with the date of DROP participation, the member's initial normal monthly benefit, including creditable service, optional form of payment, and average final compensation, and the effective date of retirement shall be fixed. The beneficiary established under the Florida Retirement System shall be the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies prior to the completion of the period of DROP participation. In the event a joint annuitant predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable. Such retirement benefit, the annual cost of living adjustments provided in s. 121.101, and interest shall accrue monthly in the System Trust Fund. Such interest shall accrue at an effective annual rate of 6.5 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.

2. Each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP. Such accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing such lump-sum payment upon beginning participation in DROP will not be eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which combined with the original payment does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. Such early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in the DROP. If the member elects to wait and receive such lump-sum payment

upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in the DROP.

3.2. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in the DROP, provided such date is properly established, with the written confirmation of the employer, and the approval of the division, on forms required by the division.

4.3. Normal retirement benefits and interest thereon shall continue to accrue in the DROP until the established termination date of the DROP, or until the participant terminates employment or dies prior to such date. Although individual DROP accounts shall not be established, a separate accounting of each participant's accrued benefits under the DROP shall be calculated and provided to participants annually.

5.4. At the conclusion of the participant's DROP, the division shall distribute the participant's total accumulated DROP benefits, subject to the following provisions:

a. The division shall receive verification by the participant's employer or employers that such participant has terminated employment as provided in s. 121.021(39)(b).

b. The terminated DROP participant or, if deceased, such participant's named beneficiary, shall elect on forms provided by the division to receive payment of the DROP benefits in accordance with one of the options listed below. For a participant or beneficiary who fails to elect a method of payment within 60 days of termination of the DROP, the division will pay a lump sum as provided in sub-sub-subparagraph(I).

(I) Lump sum.—All accrued DROP benefits, plus interest, less withholding taxes remitted to the Internal Revenue Service, shall be paid to the DROP participant or surviving beneficiary.

(II) Direct rollover.—All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code.

(III) Partial lump sum.—A portion of the accrued DROP benefits shall be paid to the DROP participant or surviving spouse, less withholding taxes remitted to the Internal Revenue Service, and the remaining DROP benefits shall be transferred directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account

or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code. The proportions shall be specified by the DROP participant or surviving beneficiary.

c. The form of payment selected by the DROP participant or surviving beneficiary complies with the minimum distribution requirements of the Internal Revenue Code ~~and payments begin no later than the date on which the participant reaches age 70 years and 6 months.~~

d. ~~For~~ A DROP participant who fails to terminate employment as defined in s. 121.021(39)(b), ~~the member shall be deemed not to be retired and the DROP election shall be null and void. Florida Retirement System membership shall be reestablished retroactively to the date of the commencement of the DROP, and each the employer with whom the participant continues employment shall be required to pay to the System Trust Fund the difference between the DROP contributions paid in paragraph (i) and the contributions required for the applicable Florida Retirement System class of membership during the period the member participated in the DROP, plus 6.5 percent interest compounded annually.~~

6.5. The accrued benefits of any DROP participant, and any contributions accumulated under such program, shall not be subject to assignment, execution, attachment, or to any legal process whatsoever, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

7.6. DROP participants shall not be eligible for disability retirement benefits as provided in subsection (4).

Section 2. Section 121.1122, Florida Statutes, is amended to read:

121.1122 Purchase of retirement credit for in-state public service and in-state service in accredited nonpublic, ~~nonsectarian~~ schools and colleges, including charter schools.—Effective January 1, 1998, a member of the Florida Retirement System may purchase creditable service for periods of certain public or nonpublic, ~~nonsectarian~~ employment performed in this state, as provided in this section.

(1) PURCHASE OF RETIREMENT CREDIT AUTHORIZED.—Subject to the provisions of subsections (2) and (3), a member of the Florida Retirement System may purchase up to 5 years of retirement credit for:

(a) Periods of public employment in this state; or

(b) Periods of employment in charter schools or in any nonpublic, ~~nonsectarian~~ school or college in this state that is accredited by the Southern Association of Colleges and Schools.

Credit for 1 year of such service may be purchased for each year of creditable service a member completes under the Florida Retirement System.

(2) LIMITATIONS AND CONDITIONS.—

(a) A member is not eligible to receive credit for in-state service under this section until he or she has completed 10 years of creditable service under the Florida Retirement System, excluding service purchased under this section and out-of-state service claimed and purchased under s. 121.1115.

(b) A member may not purchase and receive credit for more than 5 years of creditable service aggregated under the provisions of this section and s. 121.1115.

(c) Service credit claimed under this section shall be credited only as service in the Regular Class of membership and shall be subject to the provisions of s. 112.65.

(d) A member shall be eligible to receive service credit for in-state service performed after leaving the Florida Retirement System only upon returning to membership and completing at least 1 year of creditable service in the Florida Retirement System following the in-state service.

(e) The service claimed must have been service covered by a retirement or pension plan provided by the employer.

(3) COST.—The cost to purchase retirement credit under this section shall be calculated in the same manner as set forth in s. 121.1115(2) for purchase of credit for out-of-state service.

Section 3. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval April 22, 1998.

Filed in Office Secretary of State April 21, 1998.

¹**121.091 Benefits payable under the system.**--Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the division. The division may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the division's rules. The division shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(13) **DEFERRED RETIREMENT OPTION PROGRAM.**--In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the System Trust Fund on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP.

(a) *Eligibility of member to participate in the DROP.*--All active Florida Retirement System members in a regularly established position, and all active members of either the Teachers' Retirement System established in chapter 238 or the State and County Officers' and Employees' Retirement System established in chapter 122 which systems are consolidated within the Florida Retirement System under s. 121.011, are eligible to elect participation in the DROP provided that:

1. The member is not a renewed member of the Florida Retirement System under s. 121.122, or a member of the State Community College System Optional Retirement Program under s. 121.051, the Senior Management Service Optional Annuity Program under s. 121.055, or the optional retirement program for the State University System under s. 121.35.

2. Election to participate is made within 12 months immediately following the date on which the member first reaches normal retirement date, or, for a member who reaches normal retirement date based on service before he or she reaches age 62, or age 55 for Special Risk Class members, election to participate may be deferred to the 12 months immediately following the date the member attains 57, or age 50 for Special Risk Class members. For a member who first reached normal retirement date or the deferred eligibility date described above prior to the effective date of this section, election to participate shall be made within 12 months after the effective date of this section. A member who fails to make an election within such 12-month limitation period shall forfeit all rights to participate in the DROP. The member shall advise his or her employer and the division in writing of the date on which the DROP shall begin. Such beginning date may be subsequent to the 12-month election period, but must be within the 60-month limitation period as provided in subparagraph (b)1. When establishing eligibility of the member to participate in the DROP or the 60-month maximum participation period, the member may elect to include or exclude any optional service credit purchased by the member from the total service used to establish the normal retirement date. A member with dual normal

retirement dates shall be eligible to elect to participate in DROP within 12 months after attaining normal retirement date in either class.

3. The employer of a member electing to participate in the DROP, or employers if dually employed, shall acknowledge in writing to the division the date the member's participation in the DROP begins and the date the member's employment and DROP participation will terminate.

4. Simultaneous employment of a participant by additional Florida Retirement System employers subsequent to the commencement of participation in the DROP shall be permissible provided such employers acknowledge in writing a DROP termination date no later than the participant's existing termination date or the 60-month limitation period as provided in subparagraph (b)1.

5. A DROP participant may change employers while participating in the DROP, subject to the following:

a. A change of employment must take place without a break in service so that the member receives salary for each month of continuous DROP participation. If a member receives no salary during a month, DROP participation shall cease unless the employer verifies a continuation of the employment relationship for such participant pursuant to s. 121.021(39)(b).

b. Such participant and new employer shall notify the division on forms required by the division as to the identity of the new employer.

c. The new employer shall acknowledge, in writing, the participant's DROP termination date, which may be extended but not beyond the original 60-month period provided in subparagraph (b)1., shall acknowledge liability for any additional retirement contributions and interest required if the participant fails to timely terminate employment, and shall be subject to the adjustment required in ²sub-subparagraph (c)4.d.

(b) *Participation in the DROP.--*

1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months immediately following the date on which the member first reaches his or her normal retirement date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a)2. However, a member who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP, except a member of the Special Risk Class who has reached normal retirement date prior to the effective date of the DROP and whose total accrued value exceeds 75 percent of average final compensation as of his or her effective date of retirement shall be eligible to participate in the DROP for no more than 36 calendar months immediately following the effective date of the DROP.

2. Upon deciding to participate in the DROP, the member shall submit, on forms required by the division:

a. A written election to participate in the DROP;

b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. Such termination date shall be in a binding letter of resignation with the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of his employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant shall be a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. However, participation in the DROP does not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective and termination occurs as provided in s. 121.021(39).

4. Elected officers shall be eligible to participate in the DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate in the DROP until the next succeeding term in that office. Such elected officer who exercises this option may participate in the DROP for up to 60 calendar months or a period of no longer than such succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly, except, however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP shall be null and void as provided in ²sub-subparagraph (c)4.d.

c. An elected officer who is dually employed and elects to participate in DROP shall be required to satisfy the definition of termination within the 60-month limitation period as provided in subparagraph 1. for the nonelected position and may continue employment as an elected officer as provided in s. 121.053. The elected officer will be enrolled as a renewed member in the Elected State and County Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.22, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(c) Benefits payable under the DROP.--

1. Effective with the date of DROP participation, the member's initial normal monthly benefit, including creditable service, optional form of payment, and average final compensation, and the effective date of retirement shall be fixed. The beneficiary established under the Florida Retirement System shall be the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies prior to the completion of the period of DROP participation. In the event a joint annuitant predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable. Such retirement benefit, the annual

cost of living adjustments provided in s. 121.101, and interest shall accrue monthly in the System Trust Fund. Such interest shall accrue at an effective annual rate of 6.5 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.

2. Each employee who elects to participate in the DROP shall be allowed to elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in the DROP. Such accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing such lump-sum payment upon beginning participation in DROP will not be eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which combined with the original payment does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. Such early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in the DROP. If the member elects to wait and receive such lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time cannot be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in the DROP.

3. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in the DROP, provided such date is properly established, with the written confirmation of the employer, and the approval of the division, on forms required by the division.

4. Normal retirement benefits and interest thereon shall continue to accrue in the DROP until the established termination date of the DROP, or until the participant terminates employment or dies prior to such date. Although individual DROP accounts shall not be established, a separate accounting of each participant's accrued benefits under the DROP shall be calculated and provided to participants.

5. At the conclusion of the participant's DROP, the division shall distribute the participant's total accumulated DROP benefits, subject to the following provisions:

a. The division shall receive verification by the participant's employer or employers that such participant has terminated employment as provided in s. 121.021(39)(b).

b. The terminated DROP participant or, if deceased, such participant's named beneficiary, shall elect on forms provided by the division to receive payment of the DROP benefits in accordance with one of the options listed below. For a participant or beneficiary who fails to elect a method of payment within 60 days of termination of the DROP, the division will pay a lump sum as provided in sub-sub-subparagraph (I).

(I) Lump sum.--All accrued DROP benefits, plus interest, less withholding taxes remitted to the Internal Revenue Service, shall be paid to the DROP participant or surviving beneficiary.

(II) Direct rollover.--All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the

surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code.

(III) Partial lump sum.--A portion of the accrued DROP benefits shall be paid to the DROP participant or surviving spouse, less withholding taxes remitted to the Internal Revenue Service, and the remaining DROP benefits shall be transferred directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code. The proportions shall be specified by the DROP participant or surviving beneficiary.

c. The form of payment selected by the DROP participant or surviving beneficiary complies with the minimum distribution requirements of the Internal Revenue Code.

d. A DROP participant who fails to terminate employment as defined in s. 121.021(39)(b) shall be deemed not to be retired, and the DROP election shall be null and void. Florida Retirement System membership shall be reestablished retroactively to the date of the commencement of the DROP, and each employer with whom the participant continues employment shall be required to pay to the System Trust Fund the difference between the DROP contributions paid in paragraph (i) and the contributions required for the applicable Florida Retirement System class of membership during the period the member participated in the DROP, plus 6.5 percent interest compounded annually.

6. The accrued benefits of any DROP participant, and any contributions accumulated under such program, shall not be subject to assignment, execution, attachment, or to any legal process whatsoever, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders as provided in s. 61.1301, and federal income tax levies.

7. DROP participants shall not be eligible for disability retirement benefits as provided in subsection (4).

(d) *Death benefits under the DROP.--*

1. Upon the death of a DROP participant, the named beneficiary shall be entitled to apply for and receive the accrued benefits in the DROP as provided in ³sub-subparagraph (c)4.b.

2. The normal retirement benefit accrued to the DROP during the month of a participant's death shall be the final monthly benefit credited for such DROP participant.

3. Eligibility to participate in the DROP terminates upon death of the participant. If the participant dies on or after the effective date of enrollment in the DROP, but prior to the first monthly benefit being credited to the DROP, Florida Retirement System benefits shall be paid in accordance with subparagraph (7)(c)1. or subparagraph 2.

4. A DROP participants' survivors shall not be eligible to receive Florida Retirement System death benefits as provided in paragraph (7)(d).

(e) *Cost-of-living adjustment.*--On each July 1, the participants' normal retirement benefit shall be increased as provided in s. 121.101.

(f) *Retiree health insurance subsidy.*--DROP participants are not eligible to apply for the retiree health insurance subsidy payments as provided in s. 112.363 until such participants have terminated employment and participation in the DROP.

(g) *Renewed membership.*--DROP participants shall not be eligible for renewed membership in the Florida Retirement System under ss. 121.053 and 121.122 until termination of employment is effectuated as provided in s. 121.021(39)(b).

(h) *Employment limitation after DROP participation.*--Upon satisfying the definition of termination of employment as provided in s. 121.021(39)(b), DROP participants shall be subject to such reemployment limitations as other retirees. Reemployment restrictions applicable to retirees as provided in subsection (9) shall not apply to DROP participants until their employment and participation in the DROP are terminated.

(i) *Contributions.*--

1. All employers paying the salary of a DROP participant filling a regularly established position shall contribute 11.56 percent of such participant's gross compensation, which shall constitute the entire employer DROP contribution with respect to such participant. Such contributions, payable to the System Trust Fund in the same manner as required in s. 121.071, shall be made as appropriate for each pay period and are in addition to contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund. Such employer, social security, and health insurance subsidy contributions are not included in the DROP.

2. The employer shall, in addition to subparagraph 1., also withhold one-half of the entire social security contribution required for the participant. Contributions for social security by each participant and each employer, in the amount required for social security coverage as now or hereafter provided by the federal Social Security Act, shall be in addition to contributions specified in subparagraph 1.

3. All employers paying the salary of a DROP participant filling a regularly established position shall contribute 0.66 percent of such participant's gross compensation, which shall constitute the employer's health insurance subsidy contribution with respect to such participant. Such contributions shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

(j) *Forfeiture of retirement benefits.*--Nothing in this section shall be construed to remove DROP participants from the scope of s. 8(d), Art. II of the State Constitution, s. 112.3173, and paragraph (5)(f). DROP participants who commit a specified felony offense while employed will be subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

(k) *Administration of program.*--The division shall make such rules as are necessary for the effective and efficient administration of this subsection. The division shall not be required to advise members of the federal tax consequences of an election related to the DROP but may

advise members to seek independent advice.

History.--s. 9, ch. 70-112; s. 1, ch. 71-22; s. 1, ch. 72-332; s. 1, ch. 72-334; s. 2, ch. 72-344; s. 3, ch. 72-345; s. 3, ch. 72-388; ss. 6, 7, ch. 74-302; s. 2, ch. 74-328; s. 2, ch. 74-376; s. 1, ch. 75-86; s. 1, ch. 77-286; s. 6, ch. 78-308; s. 3, ch. 79-375; s. 2, ch. 80-126; s. 1, ch. 80-128; ss. 1, 3, ch. 80-130; s. 3, ch. 80-242; s. 5, ch. 81-307; s. 1, ch. 83-58; s. 7, ch. 83-76; ss. 1, 2, ch. 84-11; ss. 10, 20, ch. 84-266; s. 1, ch. 85-137; s. 4, ch. 85-220; s. 1, ch. 85-246; s. 3, ch. 86-172; s. 1, ch. 87-149; s. 1, ch. 88-61; s. 2, ch. 88-238; s. 13, ch. 88-382; s. 2, ch. 89-220; s. 1, ch. 89-260; s. 15, ch. 89-367; s. 13, ch. 90-274; s. 5, ch. 90-301; s. 1, ch. 91-276; s. 7, ch. 92-122; s. 5, ch. 93-149; s. 8, ch. 93-193; s. 4, ch. 93-285; s. 773, ch. 95-147; s. 2, ch. 95-338; s. 7, ch. 96-368; s. 2, ch. 97-154; s. 8, ch. 97-180; s. 1, ch. 98-18; s. 9, ch. 98-138; s. 9, ch. 98-292; s. 7, ch. 98-413.

¹**Note.**--Section 16, ch. 98-138, provides that "[i]t is the intent of the Legislature that the amendments to sections 121.021, 121.051, 121.0515, 121.052, 121.053, 121.055, 121.071, 121.081, 121.091, 121.111, 121.121, 121.122, 121.35, and 121.40, Florida Statutes, made by this act are intended to be supplemental to other amendments to those sections which are enacted at the 1998 regular session of the Legislature, unless a contrary intent is specifically indicated in this act or in such other amendments."

²**Note.**--Redesignated as sub-subparagraph (c)5.d. by s. 1, ch. 98-18.

³**Note.**--Redesignated as sub-subparagraph (c)5.b. by s. 1, ch. 98-18.

January 19, 1999

Mr. Julian Efir
Kansas Legislative Research Department
Room 545 – North State House
300 SW 10th Street
Topeka, Kansas 66612

Re: **Third Interim Report**

Dear Julian:

Enclosed are 20 bound copies plus one loose copy of our Third Interim Report to the State of Kansas Joint Committee on Pensions, Investments and Benefits on Retirement Plan Design Alternatives.

We look forward to presenting the report to the Committee.

Sincerely,



Thomas J. Cavanaugh, F.S.A.
Senior Consultant and Actuary

TJC:ct
Enclosure

CC: Brad L. Armstrong
Brian F. Dunn

1-57