

HOUSE BILL No. 4266

February 15, 2005, Introduced by Reps. Nofs, Farhat, Proos, Steil, Amos, Jones, Booher, Shaffer, Wenke, Meyer, Gleason, Stakoe, Green, Gaffney, Plakas, Hune, Condino, Accavitti, Newell, Moore, Walker, Moolenaar, Baxter and Virgil Smith and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1937 PA 345, entitled
"Fire fighters and police officers retirement act,"
by amending section 6 (MCL 38.556), as amended by 2003 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) Age and service retirement benefits payable under
2 this act are as follows:

3 (a) A member who is 55 years of age or older and who has 25 or
4 more years of service as a police officer or fire fighter in the
5 employ of the municipality affected by this act may retire from
6 service upon written application to the retirement board stating a
7 date, not less than 30 days or more than 90 days after the
8 execution and filing of the application, on which the member
9 desires to be retired. The retirement board shall grant the

benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement. Upon the approval of the legislative body or the electors of a municipality under this act, a member under 50 years of age who has 25 or more years of service, or without the necessity for approval, a member 50 years of age or more who has 25 or more years of service, may leave service and receive the full retirement benefits payable throughout the member's life as provided in subdivision ~~—(e)—~~ **(C)**.

~~—— (b) A member who is 60 years of age or older shall be retired by the retirement board upon the written application of the legislative body, or board or official provided in the charter of the municipality as head of the department in which the member is employed. Upon retirement, the retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement.~~

~~—— (c) A member who is 65 years of age shall be retired by the retirement board on the first day of the month following attainment of 65 years of age.~~

(B) ~~—(d)—~~ A member who has 10 or more years of service shall have vested retirement benefits that are not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in subdivision (a) for

1 any reason except the member's retirement or death, the member is
2 entitled to a pension that shall begin the first day of the
3 calendar month immediately after the month in which the member's
4 written application for the pension is filed with the retirement
5 board that is on or after the date the member would have been
6 eligible to retire had the member continued in employment. The
7 retirement board shall grant the member the benefits to which the
8 member is entitled under this act, unless the member resumes
9 service. If the member resumes service, the member's pension shall
10 be further deferred with service years of credit until the member
11 actually retires.

12 (C) ~~-(e)-~~ Upon retirement from service as provided in this
13 subsection, a member shall receive a regular retirement pension
14 payable throughout the member's life of 2% of the member's average
15 final compensation multiplied by the first 25 years of service
16 credited to the member, plus 1% of the member's average final
17 compensation multiplied by the number of years, and fraction of a
18 year, of service rendered by the member in excess of 25 years. A
19 municipality under this act, upon approval of the legislative body
20 or the electors of the municipality, may increase the percentage of
21 the payment from 2% up to a maximum of 2.5%. If an increase is
22 approved, the increase shall not be reduced for members under the
23 system at the time of the increase. The legislative body may also
24 increase the percentage of employee contributions. If a retired
25 member dies before the total of regular pension payments received
26 by the member equals the total of the member's contributions made
27 to the retirement system, the difference between the member's total

1 contributions and the total of the member's regular retirement
2 pension payments received shall be paid in a single sum to the
3 person or persons the member nominates by written designation duly
4 executed and filed with the retirement board. If there is not a
5 person or persons surviving the retired member, the difference, if
6 any, shall be paid to the retired member's legal representative or
7 estate.

8 **(D)** ~~-(f)-~~ As used in this section, "average final
9 compensation" means the average of the highest annual compensation
10 received by a member during a period of 5 consecutive years of
11 service contained within the member's 10 years of service
12 immediately preceding the member's retirement or leaving service.
13 However, if so provided in a collective bargaining agreement
14 entered into between a municipality under this act and the
15 appropriate recognized bargaining agent, average final compensation
16 may mean the average of the 3 years of highest annual compensation
17 received by a member during the member's 10 years of service
18 immediately preceding the member's retirement or leaving service.
19 If the member has less than 5 years of service, average final
20 compensation means the annual average compensation received by the
21 member during his or her total years of service.

22 **(E)** ~~-(g)-~~ A member shall be given service credit for time
23 spent in the military, naval, marine, or other armed service of the
24 United States government during time of war, or other national
25 emergency recognized by the board, if the member was employed by
26 the municipality at the time of entry into the armed service, and
27 is or was reemployed by the municipality as a police officer or

1 fire fighter within 6 months after the date of termination of his
2 or her required enlistment or assignment in the armed service. A
3 municipality by a 3/5 vote of its governing body or by a majority
4 vote of the qualified electors may provide service credit for not
5 more than 6 years of active military service to the United States
6 government to a member who is employed subsequent to this military
7 service upon payment to the retirement system of 5% of the member's
8 full-time or equated full-time compensation for the fiscal year in
9 which payment is made multiplied by the years of service that the
10 member elects to purchase up to the maximum. Service is not
11 creditable if it is or would be creditable under any other federal,
12 state, or local publicly supported retirement system. However, this
13 restriction does not apply to those persons who have or will have
14 acquired retirement eligibility under the federal government for
15 service in the reserve. A member shall be given service credit for
16 the time the member is absent from active service without full pay
17 on account of sickness or injury. If the absence from active
18 service is due to nonservice connected sickness or injury, not more
19 than 60 days of the absence shall be credited as service in any 1
20 calendar year, as determined by the retirement board.

21 (F) ~~—(h)—~~ Before the effective date of the member's
22 retirement as provided in this subsection, but not after the
23 effective date of the member's retirement, a member may elect to
24 receive his or her benefit in a pension payable throughout the
25 member's life, called a regular retirement pension, or the member
26 may elect to receive the actuarial equivalent, computed as of the
27 effective date of retirement, of the member's regular retirement

1 pension in a reduced retirement pension payable throughout the
2 member's life, and nominate a survivor beneficiary, under an option
3 provided in this subdivision. Upon the death of a retirant who
4 retires on or after July 1, 1975, and who is receiving a regular
5 retirement pension, his or her spouse, if living, shall receive a
6 pension equal to 60% of the regular retirement pension the deceased
7 retirant was receiving. Benefits shall not be paid under this
8 subdivision on account of the death of a retirant if the member
9 elected to receive his or her pension under an option provided in
10 this subdivision. As used in this subsection, "spouse" means the
11 person to whom the retirant was legally married on both the
12 effective date of retirement and the date of death. Except as
13 otherwise provided in this act, if a member fails to elect an
14 option before the effective date of retirement, then the pension
15 shall be paid as a regular retirement pension. A member may elect 1
16 of the following options:

17 (i) Option I. Upon the death of a retired member, his or her
18 reduced retirement pension shall be continued throughout the life
19 of and paid to the person, having an insurable interest in the
20 retired member's life, that the member nominated by written
21 designation executed and filed with the retirement board before the
22 effective date of the member's retirement.

23 (ii) Option II. Upon the death of a retired member, 1/2 of his
24 or her reduced retirement pension shall be continued throughout the
25 life of and paid to the person, having an insurable interest in the
26 retired member's life, that the member nominated by written
27 designation executed and filed with the retirement board before the

1 effective date of the member's retirement.

2 (G) ~~-(i)-~~ If a member continues in service on or after the
3 date of acquiring 20 years of service credit, does not have an
4 option I election provided for in subdivision ~~-(j)-~~ (H) in force,
5 and dies while in service of the municipality before the effective
6 date of the member's retirement, leaving a surviving spouse, the
7 spouse shall receive a pension computed in the same manner as if
8 the member had retired effective the day preceding the date of the
9 member's death, elected option I provided for in subdivision ~~-(h)-~~
10 (F), and nominated the spouse as survivor beneficiary. Upon the
11 death of the spouse the pension shall terminate. A pension shall
12 not be paid under this subdivision on account of the death of a
13 member if benefits are paid under subsection (2) on account of the
14 member's death.

15 (H) ~~-(j)-~~ A member who continues in service on or after the
16 date of acquiring 25 years of service credit may, at any time
17 before the effective date of the member's retirement, by written
18 declaration executed and filed with the board in the manner and
19 form prescribed by the board, elect option I provided for in
20 subdivision ~~-(h)-~~ (F) and nominate a survivor beneficiary whom the
21 board finds to be dependent upon the member for at least 50% of the
22 beneficiary's support. If a member who has an option I election
23 provided for in this subdivision in force dies while in service
24 before the effective date of the member's retirement, the member's
25 survivor beneficiary shall immediately receive the same pension
26 that the survivor beneficiary would have been entitled to receive
27 under option I if the member had retired pursuant to this act

1 effective the day preceding the date of the member's death,
2 notwithstanding that the member may not have attained 55 years of
3 age. If a member who has an option I election provided for in this
4 subdivision in force subsequently retires pursuant to this act, the
5 member, within 90 days immediately preceding the effective date of
6 the member's retirement, but not after the effective date of the
7 member's retirement, may elect an option provided for in
8 subdivision ~~-(h)-~~ **(F)**. The option election is effective as of the
9 effective date of the member's retirement. A pension shall not be
10 paid under this subdivision on account of the death of a member if
11 benefits are paid under subsection (2) on account of the member's
12 death.

13 **(I)** ~~-(k)-~~ If a retirant receiving a reduced retirement
14 pension under subdivision ~~-(h)(i) or (ii)-~~ **(F)(i) OR (ii)** is divorced
15 from the spouse who had been named the retirant's survivor
16 beneficiary under subdivision ~~-(h)(i) or (ii)-~~ **(F)(i) OR (ii)**, the
17 election of a reduced retirement pension payment option shall be
18 considered void by the retirement system if the judgment of divorce
19 or award or order of the court, or an amended judgment of divorce
20 or award or order of the court, described in section 9 and dated
21 after June 27, 1991 provides that the election of a reduced
22 retirement pension payment option under subdivision ~~-(h)(i) or (ii)-~~
23 **(F)(i) OR (ii)** is to be considered void by the retirement system and
24 the retirant provides a certified copy of the judgment of divorce
25 or award or order of the court, or an amended judgment of divorce
26 or award or order of the court, to the retirement system. If the
27 election of a reduced retirement pension payment option under

1 subdivision ~~—(h)(i) or (ii)—~~ **(F)(i) OR (ii)** is considered void by the
2 retirement system under this subsection, the retirant's retirement
3 pension shall revert to a regular retirement pension, including
4 postretirement adjustments, if any, subject to an award or order of
5 the court as described in the public employee retirement benefit
6 protection act. The retirement pension shall revert to a regular
7 retirement pension under this subdivision effective the first day
8 of the month after the date the retirement system receives a
9 certified copy of the judgment of divorce or award or order of the
10 court. This subdivision does not supersede a judgment of divorce or
11 award or order of the court in effect on June 27, 1991. This
12 subdivision does not require the retirement system to distribute or
13 pay retirement assets on behalf of a retirant in an amount that
14 exceeds the actuarially determined amount that would otherwise
15 become payable if a judgment of divorce had not been rendered.

16 (2) Disability and service connected death benefits payable
17 under this act are as follows:

18 (a) To a surviving spouse, a duty death pension of the same
19 amount each week as that which has been paid the surviving spouse
20 under the worker's disability compensation act of 1969, 1969 PA
21 317, MCL 418.101 to 418.941, to become due and payable on the
22 termination of the payments to the surviving spouse by a
23 municipality under the worker's disability compensation act of
24 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue for the
25 surviving spouse's life.

26 (b) If death results to a member in the line of duty, and the
27 member leaves surviving children, the children shall be paid a

1 pension of the same amount as that which has been paid to them as a
2 weekly benefit under the worker's disability compensation act of
3 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and
4 payable upon termination of the payments under the worker's
5 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
6 418.941, and to continue to each surviving child until he or she
7 attains 18 years of age, or until his or her marriage or death
8 before attaining 18 years of age.

9 (c) If death results to a member in the line of duty and the
10 member leaves other surviving dependents, the dependents shall
11 receive a pension of the same amount as that which has been paid to
12 them as a weekly benefit under the worker's disability compensation
13 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and
14 payable upon termination of the payments under the worker's
15 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
16 418.941, and to continue until the time the retirement board
17 determines that the need for a pension no longer exists.

18 (d) Upon the application of a member or the member's
19 department head, a member who becomes totally incapacitated for
20 duty by reason of a personal injury or disease occurring as the
21 natural and proximate result of causes arising out of and in the
22 course of the member's employment by the municipality shall be
23 retired by the retirement board. The member shall be given a
24 medical examination by a medical committee consisting of a
25 physician named by the retirement board, a physician named by the
26 member claiming benefits, and a third physician designated by the
27 first 2 physicians named. The medical committee, if determined by a

1 majority opinion, shall certify in writing that the member is
2 mentally or physically incapacitated for the further performance of
3 duty as a police officer or fire fighter in the service of the
4 municipality; that the incapacity is likely to be permanent; and
5 that the member should be retired. Upon retirement for disability
6 as provided in this subdivision, a member who has not attained 55
7 years of age shall receive a disability retirement pension of 50%
8 of the member's average final compensation, which shall be
9 determined according to subsection ~~-(1)(f)-~~ **(1)(D)**, and shall be
10 payable until the member becomes 55 years of age. Upon becoming 55
11 years of age, the disabled member shall receive a disability
12 retirement pension computed according to subsection ~~-(1)(e)-~~
13 **(1)(C)**. In computing the disability retirement pension, the member
14 shall be given service credit for the period of receipt of a
15 disability retirement pension before attainment of 55 years of age.
16 If a member retired after attaining 55 years of age on account of
17 disability, as provided in this subdivision, the member shall
18 receive a disability retirement pension computed according to
19 subsection ~~-(1)(e)-~~ **(1)(C)**, notwithstanding that the member may not
20 have 25 years of service credit. The disability retirement pension
21 provided for in this subdivision is subject to subdivisions (f) and
22 (g).

23 (e) Upon the application of a member or the member's
24 department head, a member in service who has 5 or more years of
25 service credit and who becomes totally and permanently
26 incapacitated for duty by reason of a personal injury or disease
27 occurring as the result of causes arising outside the course of the

1 member's employment by the municipality may be retired by the
2 retirement board. The member shall be given a medical examination
3 by a medical committee consisting of a physician named by the
4 retirement board, a physician named by the member claiming
5 benefits, and a third physician designated by the first 2
6 physicians named. The medical committee, if determined by a
7 majority opinion, shall certify in writing that the member is
8 mentally or physically incapacitated for the further performance of
9 duty as a police officer or fire fighter in the service of the
10 municipality, that the incapacity is likely to be permanent, and
11 that the member should be retired. Upon retirement for disability,
12 as provided in this subdivision, a member who has not attained 55
13 years of age shall receive a disability retirement pension until
14 the member becomes 55 years of age, recovers, or dies, whichever
15 occurs first, of 1.5% of the member's average final compensation
16 multiplied by the number of years of service credited to the
17 member. Upon becoming 55 years of age, the member's disability
18 retirement pension shall be increased to 2% of the member's average
19 final compensation multiplied by the number of years of service
20 credited to the member at the time of his or her retirement. Upon
21 retirement for disability as provided in this subdivision, a member
22 who is 55 years of age or older shall receive a disability
23 retirement pension computed according to subsection ~~-(1)(e)~~
24 **(1)(C)**. This subdivision is subject to subdivisions (f) and (g).

25 (f) At least once each year during the first 5 years after the
26 retirement of a member with a disability retirement pension and at
27 least once in every 3-year period after disability retirement, the

1 retirement board may, and upon the retired member's application
2 shall, require a retired member who has not attained 55 years of
3 age to undergo a medical examination. The medical examination shall
4 be given by or under the direction of a physician, designated by
5 the retirement board, at the place of residence of the retired
6 member or other place mutually agreed upon. If a retired member who
7 has not attained 55 years of age refuses to submit to the medical
8 examination in the period, the member's disability retirement
9 pension may be discontinued by the retirement board. If the
10 member's refusal continues for 1 year, all the member's rights to
11 his or her disability retirement pension may be revoked by the
12 retirement board. If upon a medical examination of the retired
13 member the physician reports to the retirement board that the
14 retired member is physically capable of resuming employment in the
15 classification held by the member at the time of retirement, the
16 member shall be restored to active service in the employ of the
17 municipality and payment of the disability retirement pension shall
18 cease if the report of the physician is concurred in by the
19 retirement board. A retired member restored to active service shall
20 again become a member of the retirement system from the date of
21 return to service. The member shall contribute to the retirement
22 system after restoration to active service in the same manner as
23 before the member's disability retirement. Service credited to the
24 member at the time of disability retirement shall be restored to
25 full effect. The member shall be given service credit for the
26 period the member was receiving a duty disability retirement
27 pension provided for in subdivision (d), but shall not be given

1 service credit for the period the member was receiving a nonduty
2 disability retirement pension provided for in subdivision (e).
3 Amounts paid under the worker's disability compensation act of
4 1969, 1969 PA 317, MCL 418.101 to 418.941, to a retired member
5 shall be offset against and payable in place of benefits provided
6 under this act. If the benefits under the worker's disability
7 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are
8 less than the benefits payable under this act, the amount to be
9 paid out of the funds of the retirement system shall be the
10 difference between the benefits provided under the worker's
11 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
12 418.941, and the benefits provided in this act. Upon the
13 termination of benefits under the worker's disability compensation
14 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the benefits
15 shall be paid pursuant to this act.

16 (g) Within 60 days before a member becomes 55 years of age, or
17 before retirement from service if retirement occurs after the
18 member becomes 55 years of age, a disabled member who is retired as
19 provided in subdivision (d) or (e) may elect to continue to receive
20 a disability retirement pension as a benefit terminating at death,
21 to be known as a regular disability pension, or may elect to
22 receive the actuarial equivalent, at that time, of a regular
23 disability pension in a reduced disability pension payable
24 throughout life pursuant to an option provided in subsection
25 ~~(1)(h)~~ **(1)(F)**. If a disabled member fails to elect an option, as
26 provided in this subdivision, before becoming 55 years of age or
27 before retirement, the member's retirement pension shall be paid to

1 the member as a regular disability pension terminating at death. If
2 a disabled member who has not elected an option provided in
3 subsection ~~—(1)(h)—~~ **(1)(F)** dies before the total of the member's
4 regular disability pension payments received equals or exceeds the
5 total of the member's contributions made to the retirement system,
6 the remainder, if any, shall be paid in a single sum to the person
7 or persons nominated by the member by written designation duly
8 executed and filed with the board. If there is not a designated
9 person or persons surviving, then the remainder, if any, shall be
10 paid to the retired member's legal representative or estate.