

# HOUSE BILL No. 5169

September 5, 2007, Introduced by Reps. Wenke and Nitz and referred to the Committee on Government Operations.

A bill to amend 1937 PA 345, entitled  
"Fire fighters and police officers retirement act,"  
by amending sections 2 and 6 (MCL 38.552 and 38.556), section 6 as  
amended by 2003 PA 8.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. The retirement board created under this act shall  
2 perform the following:

3       (A) ~~(1)~~—Make rules and regulations necessary to the proper  
4 conduct of the business of the retirement system.

5       (B) ~~(2)~~—Retain legal, medical, actuarial, clerical, or other  
6 services as may be necessary for the conduct of the affairs of the  
7 retirement system and make compensations for the services retained.

8       (C) ~~(3)~~—Cause amounts as established by law to be deducted  
9 from the salaries of active members of the retirement system and be

1 paid into the treasury of the retirement system.

2 (D) ~~(4)~~—Certify to the governing body of the city, village, or  
3 municipality the amount to be contributed by the city, village, or  
4 municipality as provided in this act.

5 (E) ~~(5)~~—Cause the examination of each disability pensioner or  
6 beneficiary less than 55 years of age to be made at least once a  
7 year for the first 5 years following the pensioner's retirement,  
8 and at least once each 3 years after the 5-year period, until the  
9 pensioner has reached 55 years of age.

10 (F) ~~(6)~~—Keep records of its meetings and proceedings. The  
11 board shall hold meetings at least once each month. The business  
12 which the retirement board may perform shall be conducted at a  
13 public meeting of the board held in compliance with ~~Act No. 267 of~~  
14 ~~the Public Acts of 1976, being sections 15.261 to 15.275 of the~~  
15 ~~Michigan Compiled Laws~~ **THE OPEN MEETINGS ACT, 1976 PA 267, MCL**  
16 **15.261 TO 15.275.** Public notice of the time, date, and place of the  
17 meeting shall be given in the manner required by ~~Act No. 267 of the~~  
18 ~~Public Acts of 1976~~ **THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261**  
19 **TO 15.275.** A writing prepared, owned, used, in the possession of,  
20 or retained by the board in the performance of an official function  
21 shall be made available to the public in compliance with ~~Act No.~~  
22 ~~442 of the Public Acts of 1976, being sections 15.231 to 15.246 of~~  
23 ~~the Michigan Compiled Laws~~ **THE FREEDOM OF INFORMATION ACT, 1976 PA**  
24 **442, MCL 15.231 TO 15.246.**

25 (G) ~~(7)~~—The board shall annually elect a president and  
26 secretary from among its members.

27 (H) ~~(8)~~—Disburse the pensions and other benefits payable under

1 this act.

2 (I) ~~(9)~~—A member of the board shall not receive additional  
3 compensation for services as a board member.

4 (J) NOT LATER THAN JANUARY 2, 2008, PERFORM A COST ANALYSIS OF  
5 THE CURRENT PENSION SYSTEM IN PLACE AND ASSURE THAT THE PENSION  
6 PLAN IMPLEMENTED FOR EMPLOYEES FIRST HIRED ON AND AFTER JULY 1,  
7 2008 SHALL COST NO MORE THAN A DEFINED CONTRIBUTION PLAN.

8 Sec. 6. (1) ~~Age~~—EXCEPT AS MAY BE REQUIRED ON AND AFTER JULY 1,  
9 2008 PURSUANT TO SECTION 2(J), AGE and service retirement benefits  
10 payable under this act are as follows:

11 (a) A member who is 55 years of age or older and who has 25 or  
12 more years of service as a police officer or fire fighter in the  
13 employ of the municipality affected by this act may retire from  
14 service upon written application to the retirement board stating a  
15 date, not less than 30 days or more than 90 days after the  
16 execution and filing of the application, on which the member  
17 desires to be retired. The retirement board shall grant the  
18 benefits to which the member is entitled under this act, unless the  
19 member continues employment. If the member continues employment,  
20 the member's pension shall be deferred with service years of credit  
21 until actual retirement. Upon the approval of the legislative body  
22 or the electors of a municipality under this act, a member under 50  
23 years of age who has 25 or more years of service, or without the  
24 necessity for approval, a member 50 years of age or more who has 25  
25 or more years of service, may leave service and receive the full  
26 retirement benefits payable throughout the member's life as  
27 provided in subdivision (e).

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

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

13           (d) A member who has 10 or more years of service shall have  
14 vested retirement benefits that are not subject to forfeiture on  
15 account of disciplinary action, charges, or complaints. If the  
16 member leaves employment before the date the member would have  
17 first become eligible to retire as provided in subdivision (a) for  
18 any reason except the member's retirement or death, the member is  
19 entitled to a pension that shall begin the first day of the  
20 calendar month immediately after the month in which the member's  
21 written application for the pension is filed with the retirement  
22 board that is on or after the date the member would have been  
23 eligible to retire had the member continued in employment. The  
24 retirement board shall grant the member the benefits to which the  
25 member is entitled under this act, unless the member resumes  
26 service. If the member resumes service, the member's pension shall  
27 be further deferred with service years of credit until the member

1 actually retires.

2 (e) Upon retirement from service as provided in this  
3 subsection, a member shall receive a regular retirement pension  
4 payable throughout the member's life of 2% of the member's average  
5 final compensation multiplied by the first 25 years of service  
6 credited to the member, plus 1% of the member's average final  
7 compensation multiplied by the number of years, and fraction of a  
8 year, of service rendered by the member in excess of 25 years. A  
9 municipality under this act, upon approval of the legislative body  
10 or the electors of the municipality, may increase the percentage of  
11 the payment from 2% up to a maximum of 2.5%. If an increase is  
12 approved, the increase shall not be reduced for members under the  
13 system at the time of the increase. The legislative body may also  
14 increase the percentage of employee contributions. If a retired  
15 member dies before the total of regular pension payments received  
16 by the member equals the total of the member's contributions made  
17 to the retirement system, the difference between the member's total  
18 contributions and the total of the member's regular retirement  
19 pension payments received shall be paid in a single sum to the  
20 person or persons the member nominates by written designation duly  
21 executed and filed with the retirement board. If there is not a  
22 person or persons surviving the retired member, the difference, if  
23 any, shall be paid to the retired member's legal representative or  
24 estate.

25 (f) As used in this section, "average final compensation"  
26 means the average of the highest annual compensation received by a  
27 member during a period of 5 consecutive years of service contained

1 within the member's 10 years of service immediately preceding the  
2 member's retirement or leaving service. However, if so provided in  
3 a collective bargaining agreement entered into between a  
4 municipality under this act and the appropriate recognized  
5 bargaining agent, average final compensation may mean the average  
6 of the 3 years of highest annual compensation received by a member  
7 during the member's 10 years of service immediately preceding the  
8 member's retirement or leaving service. If the member has less than  
9 5 years of service, average final compensation means the annual  
10 average compensation received by the member during his or her total  
11 years of service.

12 (g) A member shall be given service credit for time spent in  
13 the military, naval, marine, or other armed service of the United  
14 States government during time of war, or other national emergency  
15 recognized by the board, if the member was employed by the  
16 municipality at the time of entry into the armed service, and is or  
17 was reemployed by the municipality as a police officer or fire  
18 fighter within 6 months after the date of termination of his or her  
19 required enlistment or assignment in the armed service. A  
20 municipality by a 3/5 vote of its governing body or by a majority  
21 vote of the qualified electors may provide service credit for not  
22 more than 6 years of active military service to the United States  
23 government to a member who is employed subsequent to this military  
24 service upon payment to the retirement system of 5% of the member's  
25 full-time or equated full-time compensation for the fiscal year in  
26 which payment is made multiplied by the years of service that the  
27 member elects to purchase up to the maximum. Service is not

1 creditable if it is or would be creditable under any other federal,  
2 state, or local publicly supported retirement system. However, this  
3 restriction does not apply to those persons who have or will have  
4 acquired retirement eligibility under the federal government for  
5 service in the reserve. A member shall be given service credit for  
6 the time the member is absent from active service without full pay  
7 on account of sickness or injury. If the absence from active  
8 service is due to nonservice connected sickness or injury, not more  
9 than 60 days of the absence shall be credited as service in any 1  
10 calendar year, as determined by the retirement board.

11 (h) Before the effective date of the member's retirement as  
12 provided in this subsection, but not after the effective date of  
13 the member's retirement, a member may elect to receive his or her  
14 benefit in a pension payable throughout the member's life, called a  
15 regular retirement pension, or the member may elect to receive the  
16 actuarial equivalent, computed as of the effective date of  
17 retirement, of the member's regular retirement pension in a reduced  
18 retirement pension payable throughout the member's life, and  
19 nominate a survivor beneficiary, under an option provided in this  
20 subdivision. Upon the death of a retirant who retires on or after  
21 July 1, 1975, and who is receiving a regular retirement pension,  
22 his or her spouse, if living, shall receive a pension equal to 60%  
23 of the regular retirement pension the deceased retirant was  
24 receiving. Benefits shall not be paid under this subdivision on  
25 account of the death of a retirant if the member elected to receive  
26 his or her pension under an option provided in this subdivision. As  
27 used in this subsection, "spouse" means the person to whom the

1   retirant was legally married on both the effective date of  
2   retirement and the date of death. Except as otherwise provided in  
3   this act, if a member fails to elect an option before the effective  
4   date of retirement, then the pension shall be paid as a regular  
5   retirement pension. A member may elect 1 of the following options:

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

12       (ii) Option II. Upon the death of a retired member, 1/2 of his  
13   or her reduced retirement pension shall be continued throughout the  
14   life of and paid to the person, having an insurable interest in the  
15   retired member's life, that the member nominated by written  
16   designation executed and filed with the retirement board before the  
17   effective date of the member's retirement.

18       (i) If a member continues in service on or after the date of  
19   acquiring 20 years of service credit, does not have an option I  
20   election provided for in subdivision (j) in force, and dies while  
21   in service of the municipality before the effective date of the  
22   member's retirement, leaving a surviving spouse, the spouse shall  
23   receive a pension computed in the same manner as if the member had  
24   retired effective the day preceding the date of the member's death,  
25   elected option I provided for in subdivision (h), and nominated the  
26   spouse as survivor beneficiary. Upon the death of the spouse the  
27   pension shall terminate. A pension shall not be paid under this



1 subdivision on account of the death of a member if benefits are  
2 paid under subsection (2) on account of the member's death.

3 (j) A member who continues in service on or after the date of  
4 acquiring 25 years of service credit may, at any time before the  
5 effective date of the member's retirement, by written declaration  
6 executed and filed with the board in the manner and form prescribed  
7 by the board, elect option I provided for in subdivision (h) and  
8 nominate a survivor beneficiary whom the board finds to be  
9 dependent upon the member for at least 50% of the beneficiary's  
10 support. If a member who has an option I election provided for in  
11 this subdivision in force dies while in service before the  
12 effective date of the member's retirement, the member's survivor  
13 beneficiary shall immediately receive the same pension that the  
14 survivor beneficiary would have been entitled to receive under  
15 option I if the member had retired pursuant to this act effective  
16 the day preceding the date of the member's death, notwithstanding  
17 that the member may not have attained 55 years of age. If a member  
18 who has an option I election provided for in this subdivision in  
19 force subsequently retires pursuant to this act, the member, within  
20 90 days immediately preceding the effective date of the member's  
21 retirement, but not after the effective date of the member's  
22 retirement, may elect an option provided for in subdivision (h).  
23 The option election is effective as of the effective date of the  
24 member's retirement. A pension shall not be paid under this  
25 subdivision on account of the death of a member if benefits are  
26 paid under subsection (2) on account of the member's death.

27 (k) If a retirant receiving a reduced retirement pension under

1 subdivision (h) (i) or (ii) is divorced from the spouse who had been  
2 named the retirant's survivor beneficiary under subdivision (h) (i)  
3 or (ii), the election of a reduced retirement pension payment option  
4 shall be considered void by the retirement system if the judgment  
5 of divorce or award or order of the court, or an amended judgment  
6 of divorce or award or order of the court, described in section 9  
7 and dated after June 27, 1991 provides that the election of a  
8 reduced retirement pension payment option under subdivision (h) (i)  
9 or (ii) is to be considered void by the retirement system and the  
10 retirant provides a certified copy of the judgment of divorce or  
11 award or order of the court, or an amended judgment of divorce or  
12 award or order of the court, to the retirement system. If the  
13 election of a reduced retirement pension payment option under  
14 subdivision (h) (i) or (ii) is considered void by the retirement  
15 system under this subsection, the retirant's retirement pension  
16 shall revert to a regular retirement pension, including  
17 postretirement adjustments, if any, subject to an award or order of  
18 the court as described in the public employee retirement benefit  
19 protection act. The retirement pension shall revert to a regular  
20 retirement pension under this subdivision effective the first day  
21 of the month after the date the retirement system receives a  
22 certified copy of the judgment of divorce or award or order of the  
23 court. This subdivision does not supersede a judgment of divorce or  
24 award or order of the court in effect on June 27, 1991. This  
25 subdivision does not require the retirement system to distribute or  
26 pay retirement assets on behalf of a retirant in an amount that  
27 exceeds the actuarially determined amount that would otherwise

1 become payable if a judgment of divorce had not been rendered.

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

4 (a) To a surviving spouse, a duty death pension of the same  
5 amount each week as that which has been paid the surviving spouse  
6 under the worker's disability compensation act of 1969, 1969 PA  
7 317, MCL 418.101 to 418.941, to become due and payable on the  
8 termination of the payments to the surviving spouse by a  
9 municipality under the worker's disability compensation act of  
10 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue for the  
11 surviving spouse's life.

12 (b) If death results to a member in the line of duty, and the  
13 member leaves surviving children, the children shall be paid a  
14 pension of the same amount as that which has been paid to them as a  
15 weekly benefit under the worker's disability compensation act of  
16 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and  
17 payable upon termination of the payments under the worker's  
18 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to  
19 418.941, and to continue to each surviving child until he or she  
20 attains 18 years of age, or until his or her marriage or death  
21 before attaining 18 years of age.

22 (c) If death results to a member in the line of duty and the  
23 member leaves other surviving dependents, the dependents shall  
24 receive a pension of the same amount as that which has been paid to  
25 them as a weekly benefit under the worker's disability compensation  
26 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and  
27 payable upon termination of the payments under the worker's

1 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to  
2 418.941, and to continue until the time the retirement board  
3 determines that the need for a pension no longer exists.

4 (d) Upon the application of a member or the member's  
5 department head, a member who becomes totally incapacitated for  
6 duty by reason of a personal injury or disease occurring as the  
7 natural and proximate result of causes arising out of and in the  
8 course of the member's employment by the municipality shall be  
9 retired by the retirement board. The member shall be given a  
10 medical examination by a medical committee consisting of a  
11 physician named by the retirement board, a physician named by the  
12 member claiming benefits, and a third physician designated by the  
13 first 2 physicians named. The medical committee, if determined by a  
14 majority opinion, shall certify in writing that the member is  
15 mentally or physically incapacitated for the further performance of  
16 duty as a police officer or fire fighter in the service of the  
17 municipality; that the incapacity is likely to be permanent; and  
18 that the member should be retired. Upon retirement for disability  
19 as provided in this subdivision, a member who has not attained 55  
20 years of age shall receive a disability retirement pension of 50%  
21 of the member's average final compensation, which shall be  
22 determined according to subsection (1)(f), and shall be payable  
23 until the member becomes 55 years of age. Upon becoming 55 years of  
24 age, the disabled member shall receive a disability retirement  
25 pension computed according to subsection (1)(e). In computing the  
26 disability retirement pension, the member shall be given service  
27 credit for the period of receipt of a disability retirement pension

1 before attainment of 55 years of age. If a member retired after  
2 attaining 55 years of age on account of disability, as provided in  
3 this subdivision, the member shall receive a disability retirement  
4 pension computed according to subsection (1)(e), notwithstanding  
5 that the member may not have 25 years of service credit. The  
6 disability retirement pension provided for in this subdivision is  
7 subject to subdivisions (f) and (g).

8 (e) Upon the application of a member or the member's  
9 department head, a member in service who has 5 or more years of  
10 service credit and who becomes totally and permanently  
11 incapacitated for duty by reason of a personal injury or disease  
12 occurring as the result of causes arising outside the course of the  
13 member's employment by the municipality may be retired by the  
14 retirement board. The member shall be given a medical examination  
15 by a medical committee consisting of a physician named by the  
16 retirement board, a physician named by the member claiming  
17 benefits, and a third physician designated by the first 2  
18 physicians named. The medical committee, if determined by a  
19 majority opinion, shall certify in writing that the member is  
20 mentally or physically incapacitated for the further performance of  
21 duty as a police officer or fire fighter in the service of the  
22 municipality, that the incapacity is likely to be permanent, and  
23 that the member should be retired. Upon retirement for disability,  
24 as provided in this subdivision, a member who has not attained 55  
25 years of age shall receive a disability retirement pension until  
26 the member becomes 55 years of age, recovers, or dies, whichever  
27 occurs first, of 1.5% of the member's average final compensation

1 multiplied by the number of years of service credited to the  
2 member. Upon becoming 55 years of age, the member's disability  
3 retirement pension shall be increased to 2% of the member's average  
4 final compensation multiplied by the number of years of service  
5 credited to the member at the time of his or her retirement. Upon  
6 retirement for disability as provided in this subdivision, a member  
7 who is 55 years of age or older shall receive a disability  
8 retirement pension computed according to subsection (1)(e). This  
9 subdivision is subject to subdivisions (f) and (g).

10 (f) At least once each year during the first 5 years after the  
11 retirement of a member with a disability retirement pension and at  
12 least once in every 3-year period after disability retirement, the  
13 retirement board may, and upon the retired member's application  
14 shall, require a retired member who has not attained 55 years of  
15 age to undergo a medical examination. The medical examination shall  
16 be given by or under the direction of a physician, designated by  
17 the retirement board, at the place of residence of the retired  
18 member or other place mutually agreed upon. If a retired member who  
19 has not attained 55 years of age refuses to submit to the medical  
20 examination in the period, the member's disability retirement  
21 pension may be discontinued by the retirement board. If the  
22 member's refusal continues for 1 year, all the member's rights to  
23 his or her disability retirement pension may be revoked by the  
24 retirement board. If upon a medical examination of the retired  
25 member the physician reports to the retirement board that the  
26 retired member is physically capable of resuming employment in the  
27 classification held by the member at the time of retirement, the

1 member shall be restored to active service in the employ of the  
2 municipality and payment of the disability retirement pension shall  
3 cease if the report of the physician is concurred in by the  
4 retirement board. A retired member restored to active service shall  
5 again become a member of the retirement system from the date of  
6 return to service. The member shall contribute to the retirement  
7 system after restoration to active service in the same manner as  
8 before the member's disability retirement. Service credited to the  
9 member at the time of disability retirement shall be restored to  
10 full effect. The member shall be given service credit for the  
11 period the member was receiving a duty disability retirement  
12 pension provided for in subdivision (d), but shall not be given  
13 service credit for the period the member was receiving a nonduty  
14 disability retirement pension provided for in subdivision (e).  
15 Amounts paid under the worker's disability compensation act of  
16 1969, 1969 PA 317, MCL 418.101 to 418.941, to a retired member  
17 shall be offset against and payable in place of benefits provided  
18 under this act. If the benefits under the worker's disability  
19 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are  
20 less than the benefits payable under this act, the amount to be  
21 paid out of the funds of the retirement system shall be the  
22 difference between the benefits provided under the worker's  
23 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to  
24 418.941, and the benefits provided in this act. Upon the  
25 termination of benefits under the worker's disability compensation  
26 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the benefits  
27 shall be paid pursuant to this act.

1           (g) Within 60 days before a member becomes 55 years of age, or  
2 before retirement from service if retirement occurs after the  
3 member becomes 55 years of age, a disabled member who is retired as  
4 provided in subdivision (d) or (e) may elect to continue to receive  
5 a disability retirement pension as a benefit terminating at death,  
6 to be known as a regular disability pension, or may elect to  
7 receive the actuarial equivalent, at that time, of a regular  
8 disability pension in a reduced disability pension payable  
9 throughout life pursuant to an option provided in subsection  
10 (1)(h). If a disabled member fails to elect an option, as provided  
11 in this subdivision, before becoming 55 years of age or before  
12 retirement, the member's retirement pension shall be paid to the  
13 member as a regular disability pension terminating at death. If a  
14 disabled member who has not elected an option provided in  
15 subsection (1)(h) dies before the total of the member's regular  
16 disability pension payments received equals or exceeds the total of  
17 the member's contributions made to the retirement system, the  
18 remainder, if any, shall be paid in a single sum to the person or  
19 persons nominated by the member by written designation duly  
20 executed and filed with the board. If there is not a designated  
21 person or persons surviving, then the remainder, if any, shall be  
22 paid to the retired member's legal representative or estate.