

HOUSE BILL No. 5909

May 13, 2004, Introduced by Reps. Nofs, Milosch, Ward, Garfield, Ruth Johnson, Gaffney, Amos, Voorhees, Stahl, Robertson, Meyer, Brandenburg, Bisbee, Pumford, Caul, Stewart, Shaffer, Huizenga, Hummel, DeRoche, Sak, Condino, Hunter, Mortimer, Pastor, Vander Veen, Palmer, Stakoe, Newell, LaJoy, Taub, Emmons and Van Regenmorter 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
2 under this act are as follows:

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

1 employment, the member's pension shall be deferred with service
2 years of credit until actual retirement. Upon the approval of
3 the legislative body or the electors of a municipality under this
4 act, a member under 50 years of age who has 25 or more years of
5 service, or without the necessity for approval, a member 50 years
6 of age or more who has 25 or more years of service, may leave
7 service and receive the full retirement benefits payable
8 throughout the member's life as provided in subdivision ~~(e)~~
9 **(c)**.

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

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

22 **(b)** ~~(d)~~ A member who has 10 or more years of service shall
23 have vested retirement benefits that are not subject to
24 forfeiture on account of disciplinary action, charges, or
25 complaints. If the member leaves employment before the date the
26 member would have first become eligible to retire as provided in
27 subdivision (a) for any reason except the member's retirement or

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

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

1 and the total of the member's regular retirement pension payments
2 received shall be paid in a single sum to the person or persons
3 the member nominates by written designation duly executed and
4 filed with the retirement board. If there is not a person or
5 persons surviving the retired member, the difference, if any,
6 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
10 compensation received by a member during a period of 5
11 consecutive years of service contained within the member's 10
12 years of service immediately preceding the member's retirement or
13 leaving service. However, if so provided in a collective
14 bargaining agreement entered into between a municipality under
15 this act and the appropriate recognized bargaining agent, average
16 final compensation may mean the average of the 3 years of highest
17 annual compensation received by a member during the member's 10
18 years of service immediately preceding the member's retirement or
19 leaving service. If the member has less than 5 years of service,
20 average final compensation means the annual average compensation
21 received by the 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
24 the United States government during time of war, or other
25 national emergency recognized by the board, if the member was
26 employed by the municipality at the time of entry into the armed
27 service, and is or was reemployed by the municipality as a police

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

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

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

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

25 (ii) Option II. Upon the death of a retired member, 1/2 of
26 his or her reduced retirement pension shall be continued
27 throughout the life of and paid to the person, having an

1 insurable interest in the retired member's life, that the member
2 nominated by written designation executed and filed with the
3 retirement board before the effective date of the member's
4 retirement.

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

18 **(h)** ~~-(j)-~~ A member who continues in service on or after the
19 date of acquiring 25 years of service credit may, at any time
20 before the effective date of the member's retirement, by written
21 declaration executed and filed with the board in the manner and
22 form prescribed by the board, elect option I provided for in
23 subdivision ~~-(h)-~~ **(f)** and nominate a survivor beneficiary whom
24 the board finds to be dependent upon the member for at least 50%
25 of the beneficiary's support. If a member who has an option I
26 election provided for in this subdivision in force dies while in
27 service before the effective date of the member's retirement, the

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

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

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

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

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

1 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue for
2 the surviving spouse's life.

3 (b) If death results to a member in the line of duty, and the
4 member leaves surviving children, the children shall be paid a
5 pension of the same amount as that which has been paid to them as
6 a weekly benefit under the worker's disability compensation act
7 of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and
8 payable upon termination of the payments under the worker's
9 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
10 418.941, and to continue to each surviving child until he or she
11 attains 18 years of age, or until his or her marriage or death
12 before attaining 18 years of age.

13 (c) If death results to a member in the line of duty and the
14 member leaves other surviving dependents, the dependents shall
15 receive a pension of the same amount as that which has been paid
16 to them as a weekly benefit under the worker's disability
17 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to
18 become due and payable upon termination of the payments under the
19 worker's disability compensation act of 1969, 1969 PA 317, MCL
20 418.101 to 418.941, and to continue until the time the retirement
21 board determines that the need for a pension no longer exists.

22 (d) Upon the application of a member or the member's
23 department head, a member who becomes totally incapacitated for
24 duty by reason of a personal injury or disease occurring as the
25 natural and proximate result of causes arising out of and in the
26 course of the member's employment by the municipality shall be
27 retired by the retirement board. The member shall be given a

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

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

1 older shall receive a disability retirement pension computed
2 according to subsection ~~-(1)(e)-~~ **(1)(c)**. This subdivision is
3 subject to subdivisions (f) and (g).

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

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

23 (g) Within 60 days before a member becomes 55 years of age,
24 or before retirement from service if retirement occurs after the
25 member becomes 55 years of age, a disabled member who is retired
26 as provided in subdivision (d) or (e) may elect to continue to
27 receive a disability retirement pension as a benefit terminating

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