

Act No. 8  
Public Acts of 2002  
Approved by the Governor  
May 20, 2003  
Filed with the Secretary of State  
May 20, 2003  
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**STATE OF MICHIGAN**  
**92nd LEGISLATURE**  
**REGULAR SESSION OF 2003**

**Introduced by Reps. Shackleton, Sheltroun, Julian, Walker, Brown, Kooiman, Palsrok, Meyer, McConico, Stewart, Phillips, Jamnick, DeRossett, Richardville, Spade, Lipsey, Murphy, Whitmer, Hager, Hummel, Vander Veen, Adamini, Gaffney, Farrah, Paletko, Pastor, LaJoy, Brandenburg, Meisner, Wojno, Clack, Taub, Accavitti, Amos, Garfield, Gleason, Milosch, Caswell, Shaffer, Hoogendyk, Nofs, Emmons, Steil, Van Regenmorter, Sak, Stahl, Sheen, Gillard and Casperson**

# **ENROLLED HOUSE BILL No. 4332**

AN ACT to amend 1937 PA 345, entitled "An act to provide for the establishment, maintenance, and administration of a system of pensions and retirements for the benefit of the personnel of fire and police departments employed by cities, villages, or municipalities having full paid members in the departments, and for the spouses and children of the members; to provide for the creation of a board of trustees to manage and operate the system; to authorize appropriations and deductions from salaries; to prescribe penalties and provide remedies; and to repeal all acts and parts of acts inconsistent therewith," by amending sections 6, 6a, and 6b (MCL 38.556, 38.556a, and 38.556b), section 6 as amended by 2002 PA 98, section 6a as amended by 1982 PA 145, and section 6b as added by 1986 PA 30.

*The People of the State of Michigan enact:*

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

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

(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.

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

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

(f) As used in this section, "average final compensation" means the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within the member's 10 years of service immediately preceding the member's retirement or leaving service. However, if so provided in a collective bargaining agreement entered into between a municipality under this act and the appropriate recognized bargaining agent, average final compensation may mean the average of the 3 years of highest annual compensation received by a member during the member's 10 years of service immediately preceding the member's retirement or leaving service. If the member has less than 5 years of service, average final compensation means the annual average compensation received by the member during his or her total years of service.

(g) A member shall be given service credit for time spent in the military, naval, marine, or other armed service of the United States government during time of war, or other national emergency recognized by the board, if the member was employed by the municipality at the time of entry into the armed service, and is or was reemployed by the municipality as a police officer or fire fighter within 6 months after the date of termination of his or her required enlistment or assignment in the armed service. A municipality by a 3/5 vote of its governing body or by a majority vote of the qualified electors may provide service credit for not more than 6 years of active military service to the United States government to a member who is employed subsequent to this military service upon payment to the retirement system of 5% of the member's full-time or equated full-time compensation for the fiscal year in which payment is made multiplied by the years of service that the member elects to purchase up to the maximum. Service is not creditable if it is or would be creditable under any other federal, state, or local publicly supported retirement system. However, this restriction does not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve. A member shall be given service credit for the time the member is absent from active service without full pay on account of sickness or injury. If the absence from active service is due to nonservice connected sickness or injury, not more than 60 days of the absence shall be credited as service in any 1 calendar year, as determined by the retirement board.

(h) Before the effective date of the member's retirement as provided in this subsection, but not after the effective date of the member's retirement, a member may elect to receive his or her benefit in a pension payable throughout the member's life, called a regular retirement pension, or the member may elect to receive the actuarial equivalent, computed as of the effective date of retirement, of the member's regular retirement pension in a reduced retirement pension payable throughout the member's life, and nominate a survivor beneficiary, under an option provided in this subdivision. Upon the death of a retirant who retires on or after July 1, 1975, and who is receiving a regular retirement pension, his or her spouse, if living, shall receive a pension equal to 60% of the regular retirement pension the deceased retirant was receiving. Benefits shall not be paid under this subdivision on account of the death of a retirant if the member elected to receive his or her pension under an option provided in this subdivision. As used in this subsection, "spouse" means the person to whom the retirant was legally married on both the effective date of retirement and the date of death. Except as otherwise provided in this act, if a member fails to elect an option before the effective date of retirement, then the pension shall be paid as a regular retirement pension. A member may elect 1 of the following options:

(i) Option I. Upon the death of a retired member, his or her reduced retirement pension shall be continued throughout the life of and paid to the person, having an insurable interest in the retired member's life, that the member

nominated by written designation executed and filed with the retirement board before the effective date of the member's retirement.

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

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

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

(k) If a retirant receiving a reduced retirement pension under subdivision (h)(i) or (ii) is divorced from the spouse who had been named the retirant's survivor beneficiary under subdivision (h)(i) or (ii), the election of a reduced retirement pension payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in section 9 and dated after June 27, 1991 provides that the election of a reduced retirement pension payment option under subdivision (h)(i) or (ii) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement pension payment option under subdivision (h)(i) or (ii) is considered void by the retirement system under this subsection, the retirant's retirement pension shall revert to a regular retirement pension, including postretirement adjustments, if any, subject to an award or order of the court as described in the public employee retirement benefit protection act. The retirement pension shall revert to a regular retirement pension under this subdivision effective the first day of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subdivision does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subdivision does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

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

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

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

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

termination of the payments under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and to continue until the time the retirement board determines that the need for a pension no longer exists.

(d) Upon the application of a member or the member's department head, a member who becomes totally incapacitated for duty by reason of a personal injury or disease occurring as the natural and proximate result of causes arising out of and in the course of the member's employment by the municipality shall be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality; that the incapacity is likely to be permanent; and that the member should be retired. Upon retirement for disability as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension of 50% of the member's average final compensation, which shall be determined according to subsection (1)(f), and shall be payable until the member becomes 55 years of age. Upon becoming 55 years of age, the disabled member shall receive a disability retirement pension computed according to subsection (1)(e). In computing the disability retirement pension, the member shall be given service credit for the period of receipt of a disability retirement pension before attainment of 55 years of age. If a member retired after attaining 55 years of age on account of disability, as provided in this subdivision, the member shall receive a disability retirement pension computed according to subsection (1)(e), notwithstanding that the member may not have 25 years of service credit. The disability retirement pension provided for in this subdivision is subject to subdivisions (f) and (g).

(e) Upon the application of a member or the member's department head, a member in service who has 5 or more years of service credit and who becomes totally and permanently incapacitated for duty by reason of a personal injury or disease occurring as the result of causes arising outside the course of the member's employment by the municipality may be retired by the retirement board. The member shall be given a medical examination by a medical committee consisting of a physician named by the retirement board, a physician named by the member claiming benefits, and a third physician designated by the first 2 physicians named. The medical committee, if determined by a majority opinion, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty as a police officer or fire fighter in the service of the municipality, that the incapacity is likely to be permanent, and that the member should be retired. Upon retirement for disability, as provided in this subdivision, a member who has not attained 55 years of age shall receive a disability retirement pension until the member becomes 55 years of age, recovers, or dies, whichever occurs first, of 1.5% of the member's average final compensation multiplied by the number of years of service credited to the member. Upon becoming 55 years of age, the member's disability retirement pension shall be increased to 2% of the member's average final compensation multiplied by the number of years of service credited to the member at the time of his or her retirement. Upon retirement for disability as provided in this subdivision, a member who is 55 years of age or older shall receive a disability retirement pension computed according to subsection (1)(e). This subdivision is subject to subdivisions (f) and (g).

(f) At least once each year during the first 5 years after the retirement of a member with a disability retirement pension and at least once in every 3-year period after disability retirement, the retirement board may, and upon the retired member's application shall, require a retired member who has not attained 55 years of age to undergo a medical examination. The medical examination shall be given by or under the direction of a physician, designated by the retirement board, at the place of residence of the retired member or other place mutually agreed upon. If a retired member who has not attained 55 years of age refuses to submit to the medical examination in the period, the member's disability retirement pension may be discontinued by the retirement board. If the member's refusal continues for 1 year, all the member's rights to his or her disability retirement pension may be revoked by the retirement board. If upon a medical examination of the retired member the physician reports to the retirement board that the retired member is physically capable of resuming employment in the classification held by the member at the time of retirement, the member shall be restored to active service in the employ of the municipality and payment of the disability retirement pension shall cease if the report of the physician is concurred in by the retirement board. A retired member restored to active service shall again become a member of the retirement system from the date of return to service. The member shall contribute to the retirement system after restoration to active service in the same manner as before the member's disability retirement. Service credited to the member at the time of disability retirement shall be restored to full effect. The member shall be given service credit for the period the member was receiving a duty disability retirement pension provided for in subdivision (d), but shall not be given service credit for the period the member was receiving a nonduty disability retirement pension provided for in subdivision (e). Amounts paid under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to a retired member shall be offset against and payable in place of benefits provided under this act. If the benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are less than the benefits payable under this act, the amount to be paid out of the funds of the retirement system shall be the difference between the benefits provided under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and the benefits provided in this act. Upon the termination of benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the benefits shall be paid pursuant to this act.

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

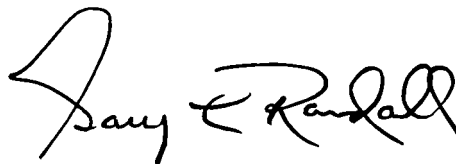
Sec. 6a. In a municipality having a population of 80,000 or more, section 6(1)(h) shall be applicable to any member who continues in service on or after the date he or she acquires 15 years of service credit.

Sec. 6b. (1) Notwithstanding section 6 or any predecessor to section 6, the remarriage of a surviving spouse shall not render the surviving spouse ineligible to receive a pension described in section 6(1)(i) or a duty death pension described in section 6(2)(a). A surviving spouse whose pension described in section 6(1)(i) or duty death pension described in section 6(2)(a) was terminated due to the surviving spouse's remarriage shall be eligible to receive that pension or duty death pension beginning on the first day of the month following the month in which written application for reinstatement is filed with the board, but shall not be eligible to receive the pension or duty death pension attributable to any month beginning before the month of reinstatement under this section.

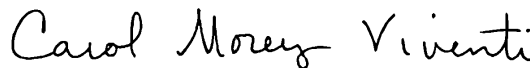
(2) Beginning on the effective date of the amendatory act that amended this subsection, the provisions of subsection (1) that apply to a surviving spouse who is eligible to receive a pension described in section 6(1)(i) shall apply to a municipality upon approval by resolution of the governing body of the municipality.

(3) Beginning on the effective date of the amendatory act that added this subsection, a surviving spouse who is eligible to receive a duty death pension described in section 6(2)(a) and who remarries after the effective date of the amendatory act that added this subsection shall not be denied a duty death pension described in section 6(2)(a) by a municipality because of the remarriage of the surviving spouse.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor