

HOUSE BILL No. 4060

January 13, 2011, Introduced by Rep. Geiss and referred to the Committee on Oversight, Reform, and Ethics.

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
10 benefits to which the member is entitled under this act, unless the
11 member continues employment. If the member continues employment,

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

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

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

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

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

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

1 person or persons the member nominates by written designation duly
2 executed and filed with the retirement board. If there is not a
3 person or persons surviving the retired member, the difference, if
4 any, shall be paid to the retired member's legal representative or
5 estate.

6 (f) As used in this section, "average final compensation"
7 means the average of the highest annual compensation received by a
8 member during a period of 5 consecutive years of service contained
9 within the member's 10 years of service immediately preceding the
10 member's retirement or leaving service. However, if so provided in
11 a collective bargaining agreement entered into between a
12 municipality under this act and the appropriate recognized
13 bargaining agent, average final compensation may mean the average
14 of the 3 years of highest annual compensation received by a member
15 during the member's 10 years of service immediately preceding the
16 member's retirement or leaving service. If the member has less than
17 5 years of service, average final compensation means the annual
18 average compensation received by the member during his or her total
19 years of service. **FOR MEMBERS WHO BECOME MEMBERS ON AND AFTER**
20 **DECEMBER 31, 2010, NOTWITHSTANDING ANYTHING THAT MAY BE TO THE**
21 **CONTRARY IN THIS ACT, AVERAGE FINAL COMPENSATION SHALL NOT EXCEED**
22 **55% OF THE MEMBER'S BASE PAY. IF A COLLECTIVE BARGAINING AGREEMENT**
23 **THAT REQUIRES A GREATER AVERAGE FINAL COMPENSATION THAN 55% OF THE**
24 **MEMBER'S BASE PAY IS IN EFFECT ON DECEMBER 31, 2010, THEN AVERAGE**
25 **FINAL COMPENSATION OF A MEMBER SUBJECT TO THE COLLECTIVE BARGAINING**
26 **AGREEMENT SHALL BE ADMINISTERED IN ACCORDANCE WITH THE TERMS OF THE**
27 **COLLECTIVE BARGAINING AGREEMENT UNTIL THE AGREEMENT EXPIRES OR IS**

1 RENEGOTIATED. AS USED IN THIS SECTION, "BASE PAY" MEANS THE HOURLY
2 PAY RATE OF THE MEMBER UP TO 40 HOURS PER WEEK AND 52 WEEKS PER
3 YEAR. BASE PAY SHALL NOT INCLUDE ANY OF THE FOLLOWING:

4 (i) OVERTIME PAY.

5 (ii) ACCRUED SICK LEAVE OR ACCRUED VACATION TIME.

6 (iii) BONUS PAY.

7 (iv) THE COST OF HEALTH INSURANCE OR OTHER FRINGE BENEFITS.

8 (v) ONE-TIME LUMP-SUM PAYMENTS.

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

1 acquired retirement eligibility under the federal government for
2 service in the reserve. A member shall be given service credit for
3 the time the member is absent from active service without full pay
4 on account of sickness or injury. If the absence from active
5 service is due to nonservice connected sickness or injury, not more
6 than 60 days of the absence shall be credited as service in any 1
7 calendar year, as determined by the retirement board.

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

1 date of retirement, then the pension shall be paid as a regular
2 retirement pension. A member may elect 1 of the following options:

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

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

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

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

24 (k) If a retirant receiving a reduced retirement pension under
25 subdivision (h) (i) or (ii) is divorced from the spouse who had been
26 named the retirant's survivor beneficiary under subdivision (h) (i)
27 or (ii), the election of a reduced retirement pension payment option

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

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

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

9 (b) If death results to a member in the line of duty, and the
10 member leaves surviving children, the children shall be paid a
11 pension of the same amount as that which has been paid to them as a
12 weekly benefit under the worker's disability compensation act of
13 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 to each surviving child until he or she
17 attains 18 years of age, or until his or her marriage or death
18 before attaining 18 years of age.

19 (c) If death results to a member in the line of duty and the
20 member leaves other surviving dependents, the dependents shall
21 receive a pension of the same amount as that which has been paid to
22 them as a weekly benefit under the worker's disability compensation
23 act of 1969, 1969 PA 317, MCL 418.101 to 418.941, to become due and
24 payable upon termination of the payments under the worker's
25 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
26 418.941, and to continue until the time the retirement board
27 determines that the need for a pension no longer exists.

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

1 pension computed according to subsection (1)(e), notwithstanding
2 that the member may not have 25 years of service credit. The
3 disability retirement pension provided for in this subdivision is
4 subject to subdivisions (f) and (g).

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

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

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

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

25 (g) Within 60 days before a member becomes 55 years of age, or
26 before retirement from service if retirement occurs after the
27 member becomes 55 years of age, a disabled member who is retired as

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