

# HOUSE BILL No. 6335

July 21, 2010, Introduced by Rep. Geiss and referred to the Committee on Intergovernmental and Regional Affairs.

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

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

10 (b) A member who is 60 years of age or older shall be retired  
11 by the retirement board upon the written application of the  
12 legislative body, or board or official provided in the charter of  
13 the municipality as head of the department in which the member is  
14 employed. Upon retirement, the retirement board shall grant the  
15 benefits to which the member is entitled under this act, unless the  
16 member continues employment. If the member continues employment,  
17 the member's pension shall be deferred with service years of credit  
18 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 attainment  
21 of 65 years of age.

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

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

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

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

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

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

5 (i) OVERTIME PAY.

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

7 (iii) BONUS PAY.

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

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

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

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

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

1 this act, if a member fails to elect an option before the effective  
2 date of retirement, then the pension shall be paid as a regular  
3 retirement pension. A member may elect 1 of the following options:

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

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

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



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

27 (2) Disability and service connected death benefits payable

1 under this act are as follows:

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

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

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

1 determines that the need for a pension no longer exists.

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

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

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

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

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

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

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

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