

Act No. 7  
Public Acts of 1989  
Approved by the Governor  
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**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1989**

Introduced by Reps. Brown, Barns, DeMars and Gubow

# **ENROLLED HOUSE BILL No. 4179**

AN ACT to amend the title and sections 3, 6, 8, and 10 of Act No. 345 of the Public Acts of 1937, entitled as amended "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/or police departments, employed by cities, villages or municipalities having full paid members in such departments, and for the widows and children of such members, and to provide for the creation of a board of trustees to manage and operate same; to authorize appropriations and deductions from salaries; and to repeal all acts and parts of acts inconsistent therewith," being sections 38.553, 38.556, 38.558, and 38.560 of the Michigan Compiled Laws; and to add section 1a.

*The People of the State of Michigan enact:*

Section 1. The title and sections 3, 6, 8, and 10 of Act No. 345 of the Public Acts of 1937, being sections 38.553, 38.556, 38.558, and 38.560 of the Michigan Compiled Laws, are amended and section 1a is added to read as follows:

## **TITLE**

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; and to repeal all acts and parts of acts inconsistent therewith.

Sec. 1a. This act shall be known and may be cited as the "fire fighters and police officers retirement act".

Sec. 3. The treasurer of the city, village, or municipality shall be the custodian of all funds of the retirement system and shall be required to give a good and sufficient bond to the retirement board for the faithful performance of his or her duties and the safekeeping of all money collected under this act. The bond shall be paid by the city, village, or municipality. The treasurer shall issue warrants for the disbursement of the funds of the retirement system upon the receipt of a voucher signed by at least 2 members of the retirement board other than the treasurer. The treasurer shall not execute a voucher or warrant unless the voucher or warrant has been previously authorized by resolution adopted by the board.

Sec. 6. Pensions and benefits payable under this act shall be as follows:

(1) Age and service retirement:

(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 city, village, or municipality affected by this act may retire from service upon written application to the board stating a date, not less than 30 days nor more than 90 days after the execution and filing of the application, on which the member desires to be retired. The board shall grant the benefits to which the member may be 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 of the electors of a city, village, or 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 subparagraph (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 city, village, or 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 may be 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 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, 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 subparagraph (a), for any reason except the member's retirement or death, the member shall be entitled to a pension which shall begin the first day of the calendar month next following the month in which the member's written application for the pension is filed with the board, on or after the date the member would have been eligible to retire had the member continued in employment. The 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 subdivision, 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 city, village, or municipality under this act, may, upon approval of the legislative body or the electors of the city, village, or municipality, 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 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 estate.

(f) "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 city, village, or municipality at the time of entry into the armed service, and is or was reemployed by the city, village, or 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 city, village, or 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 shall not be

creditable if it is or would be creditable under any other federal, state, or local publicly supported retirement system. However, this restriction shall 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 board.

(h) Before the effective date of the member's retirement as provided in this subdivision, 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, in accordance with option I or II as provided in this subparagraph. 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 straight life pension the deceased retirant was receiving. Benefits shall not be paid under this subparagraph on account of the death of a retirant if the member elected to receive his or her pension under either option I or II provided for in this subparagraph. As used in this subdivision, "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.

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

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, the member nominated by written designation duly executed and filed with the 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 subparagraph (j) in force, and dies while in service of the city or village 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 subparagraph (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 subparagraph on account of the death of a member if benefits are paid under subdivision (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 duly executed and filed with the board in the manner and form prescribed by the board, elect option I provided for in subparagraph (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 subparagraph 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 retirement allowance as the survivor beneficiary would have been entitled to receive under the 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 subparagraph 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, shall have the right to make an election of option provided for in subparagraph (h). The option election is effective as of the effective date of the member's retirement. A pension shall not be paid under this subparagraph on account of the death of a member if benefits are paid under subdivision (2) on account of the member's death.

(2) Disability and service connected death benefits:

(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, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, to become due and payable on the termination of the payments to the surviving spouse by a municipality under Act No. 317 of the Public Acts of 1969, and to continue for the surviving spouse's life or until his or her remarriage.

(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 Act No. 317 of the Public Acts of 1969, to become due and payable upon termination of the payments under Act No.

317 of the Public Acts of 1969, 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 Act No. 317 of the Public Acts of 1969, to become due and payable upon termination of the payments under Act No. 317 of the Public Acts of 1969 and to continue until the time the board determines that the need for pension or pensions 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 city, village, or municipality shall be retired by the retirement board. After a medical examination of a member made 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, 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 city, village, or municipality; that the incapacity is likely to be permanent; and that the member should be retired. Upon retirement for disability as provided in this subparagraph, 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 subdivision (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 pension computed according to subdivision (1)(e). In computing the pension the member shall be given service credit for the period of receipt of a disability 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 subparagraph, the member shall receive a disability pension computed according to subdivision (1)(e), notwithstanding that the member may not have 25 years of service credit. The disability pension provided for in this subparagraph shall be subject to subparagraphs (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 city, village, or municipality may be retired by the retirement board. After a medical examination of the member made 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, 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 city, village, or municipality, that the incapacity is likely to be permanent, and that the member should be retired. Upon retirement for disability, as provided in this subparagraph, a member who has not attained 55 years of age shall receive a disability retirement pension until the member becomes 55 years of age, or prior recovery or death, 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 subparagraph, a member who is 55 years of age or older shall receive a disability pension computed according to subdivision (1)(e). This subparagraph shall be subject to subparagraphs (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 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 to be made by or under the direction of a physician, designated by the 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 board. If the member's refusal continues for 1 year, all the member's rights in and to his or her disability retirement pension may be revoked by the board. If upon a medical examination of the retired member the physician reports to the board that the retired member is physically able and 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 city, village, or municipality and payment of the disability pension shall cease if the report of the physician is concurred in by the 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 force and effect. The member shall be given service credit for the period the member was receiving a duty disability pension provided for in subparagraph (d), but shall not be given service credit for the period the member was receiving a nonduty disability pension provided for in subparagraph (e). Amounts paid under Act No. 317 of the Public Acts of 1969 to a retired member shall be

offset against and payable in place of benefits provided under this act. If the benefits under Act No. 317 of the Public Acts of 1969 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 Act No. 317 of the Public Acts of 1969 and the benefits provided in this act. Upon the termination of benefits under Act No. 317 of the Public Acts of 1969, the benefits shall be paid in accordance with 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 subparagraph (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 retirement pension in a reduced disability retirement pension payable throughout life in accordance with option I or II provided in subdivision (1)(h). If a disabled member fails to elect an option, as provided in this subparagraph, 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 option I or II 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.

#### Sec. 8. Refunds of salary contributions:

(1) If a fire fighter or police officer dies before being placed on pension, the total amount of the member's salary deductions, with interest as the board may determine, but not to exceed 2% per annum, shall be payable to the person or persons that the member nominated by written designation duly executed and filed with the board. If there is no designated person or persons surviving, then the total of the member's salary deductions shall be paid to the member's legal representative or estate.

(2) If a fire fighter or police officer becomes separated from the service before being eligible for retirement, the member shall be paid the total of the member's contributions together with interest as the board may determine, but not to exceed 2% per annum credited to the member upon his or her written request for a refund. If the person again becomes employed by the city, village, or municipality as a police officer or fire fighter, he or she shall, within 1 year following his or her reemployment, repay to the retirement system the amount previously withdrawn together with interest at 2% per year.

Sec. 10. Any and all cash assets and funds on hand not necessary for immediate payment of pensions or benefits under this act shall be invested subject to all the terms, conditions, limitations, and restrictions imposed by the statutes of this state upon life insurance companies in making and disposing of their investments, and as provided by law relating to investment authority of public employee retirement systems under Act No. 314 of the Public Acts of 1965, being sections 38.1132 to 38.1140i of the Michigan Compiled Laws, and any and all assets of every description of the pension or retirement fund created by any city, village, or municipality under this act shall be transferred and deposited to the credit of the newly created retirement system under this act.

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.

