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## FIRE FIGHTERS AND POLICE OFFICERS RETIREMENT ACT

### ACT 345

### . . . BY THE NUMBERS

### M A P E R S

SPRING CONFERENCE 2010

Presented by:

**Thomas Michaud**

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### OBJECTIVE

To review the statutory provisions of Act 345 . . by the numbers to understand the framework of benefits and the potential issues contained within the statute.

### STATUTORY KEY

The following comments reflect various issues which have appeared before Boards in their administration of Act 345. These comments are not intended to create, expand, reduce, or eliminate any substantive benefits provided by Act 345, but are offered to facilitate discussion regarding topics which may serve to improve the administration of police and fire retirement benefits. Notwithstanding, some of these suggestions may constitute benefit changes, and in those instances the appropriate parties (employer and union, if applicable) should have an opportunity to specifically adopt such provisions after consideration of the administrative, financial and actuarial effects. As always, please refer to the specific sections of Act 345 and applicable collective bargaining agreement provisions in addressing specific questions.

Potential deletions are indicated by: ~~strike out~~

Possible additions are indicated by: **UNDERLINED BOLD**

Comments are indicated by: *[Italics]*

## ACT 345

The Fire Fighters and Police Officers Retirement Act (Act 345) was originally drafted in 1937 to be a statutory framework for local governments to administer pension programs for full-time police officers and fire fighters. While establishing a retirement system under Act 345 is optional, once created, a local government must provide benefits under the terms and conditions of the Statute.

Since its inception in 1937, Act 345 has undergone a variety of statutory amendments (e.g., 1937, 1939, 1945, 1947, 1951, 1954, 1955, 1956, 1959, 1960, 1961, 1965, 1967, 1970, 1975, 1976, 1977, 1989, 1989, 1991, 1998, 2002, 2003). While the frequency of such amendments would appear to maintain Act 345, said amendments were often presented to address specific issues and were not intended to serve as a comprehensive statutory restatement. Therefore, Act 345 has not been thoroughly updated to reflect the current environment of public pensions. In addition, on a plan by plan basis, collective bargaining agreements have served to amend various provisions of Act 345.

In essence, **while all Act 345 Plans are created equally, not all Act 345 Plans are equal.** Therefore, the result of numerous changes has been to create inconsistencies within the statute, potential unintended consequences, conflicts with collective bargaining agreements, as well as confusion among plans, trustees, administrators and other plan professionals.

## ACT 345

### Section 1. Who Administers the Retirement System?

The Retirement System is administered by a five member Board of Trustees:

- (a) The treasurer of the municipality ;
- (b) A police member - elected by members of the Police Department;
- (c) A fire member - elected by members of the Fire Department;
- (d) Two (2) individuals - appointed by the municipality.

#### **38.551 Fire and police department pension and retirement system; retirement board, members, election, appointment, terms.**

The retirement board, also referred to in this act as the ~~pension~~ board, [*referred to as pension board only once in section 11; therefore should be deleted*] created hereunder shall be known as “The retirement board” and shall be a AN INDEPENDENT corporate body, consisting of 5 ~~members~~ TRUSTEES, which shall consist of:

- (1) The treasurer of the ~~city, village or~~ municipality, so affected hereby.
- (2) Two ~~additional~~ members OF THE RETIREMENT SYSTEM, 1 of whom shall be an active member of IN THE FIRE DEPARTMENT and elected by a majority vote of the ACTIVE members of IN the fire department, and 1 of whom shall be an active member of IN THE POLICE DEPARTMENT and elected by a majority vote of the ACTIVE members of IN the police department under such rules and regulations as the retirement board shall adopt to govern such election. Each such member shall serve for a term of 4 years, except that in the first instance, the member

elected by the **MEMBERS IN THE** police department shall serve for a term of 2 years. If in the first instance only the fire department or only the police department is included in the retirement plan **SYSTEM**, the 2 ~~additional~~ members shall be elected from that department and the candidate receiving the highest number of votes shall be elected for the 4-year term and the candidate receiving the second highest number of votes shall be elected for the 2-year term.

*[Only active members of the retirement system (i.e., not retirees, former members, deferred vested former members, disability retirees) are eligible to participate in the election and serve on the retirement board; unless specifically provided by collective bargaining agreement.]*

(3) Two ~~additional members~~ **INDIVIDUALS** shall be appointed by the legislative body or another person or body authorized by the city or village charter to appoint administrative officials in any city or village affected by the provisions of this act.  
**BY THE GOVERNING BODY OF THE MUNICIPALITY.**

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## **Section 2. What Are the Powers and Duties of the Retirement Board?**

While this section has not been amended since 1977, the responsibilities required of fiduciaries has been expanded. Trustees have the legal obligation to administer the fund with the care, skill prudence and diligence that someone familiar with such matters would exercise. This standard has evolved into the “**prudent expert**” standard, such that trustees are judged by what fellow trustees would do in similar circumstances (i.e., how experts in a particular field would act). Trustees have tremendous responsibilities, and with that equal amounts of potential liability.

The law regarding fiduciary responsibility is a complex network of federal and state statutes and case law, all of which define the rules, responsibilities, and obligations governing public employment retirement systems and boards of trustees. However, these laws, rules, and regulations (e.g., Act 314 of 1965, as amended) permit trustees to retain experts to assist in the administration, management and operation of the retirement system. Therefore, trustees are allowed to use professional advisors, and in certain instances it may be a necessity, to fulfill your duties and avoid liability at the same time. This is particularly true when you are involved in important plan decisions in areas where you lack expertise. In those situations, it may be in the best interest of the plan to seek advice/counsel from a professional or to delegate some of your fiduciary responsibilities to an advisor. The professional advisors whom you will most likely retain include: investment consultant; investment manager; legal counsel; actuary; custodian and auditor.

### **38.552 Retirement board; powers and duties.**

The retirement board created under this act shall perform the following:

(1) Make rules and regulations necessary to the proper conduct of the business of the retirement system. **THREE (3) TRUSTEES OF THE RETIREMENT BOARD SHALL CONSTITUTE A QUORUM AT ANY MEETING OF THE RETIREMENT BOARD AND AT LEAST THREE (3) CONCURRING VOTES SHALL BE NECESSARY FOR ANY DECISION BY THE RETIREMENT BOARD. EACH TRUSTEE OF THE RETIREMENT BOARD SHALL BE ENTITLED TO ONE (1) VOTE ON EACH QUESTION BEFORE THE RETIREMENT BOARD.**

(2) Retain legal, medical, actuarial, clerical, **INVESTMENT** or other services as may be necessary for the conduct of the affairs of the retirement system and make compensations for the services retained.

(3) Cause amounts as established by law to be deducted from the salaries of active members of the retirement system and be paid into the treasury **FUNDS** of the retirement system.

(4) Certify to the governing body of the city, village, or municipality the amount to be contributed by the city, village, or municipality as provided in this act.

~~(5) Cause the examination of each disability pensioner or beneficiary less than 55 years of age to be made at least once a year for the first 5 years following the pensioner's retirement, and at least once each 3 years after the 5 year period, until the pensioner has reached 55 years of age. [This language is unnecessary as it is contained in section 6(2) - however, section 6(2) provides that the board may conduct re-exams.]~~

(6) Keep records of its meetings and proceedings. The board shall hold meetings at least once each month. The business which the retirement board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(7) The board shall annually elect a president and secretary from among its ~~members~~ **TRUSTEES**.

(8) Disburse the pensions and other benefits payable under this act.

(9) ~~A member~~ **TRUSTEES** of the board shall not receive additional compensation for services as a ~~board member~~ **TRUSTEE, BUT SHALL NOT SUFFER A LOSS BECAUSE OF ABSENCE FROM REGULAR EMPLOYMENT, AND SHALL BE REIMBURSED FOR ALL ACTUAL NECESSARY EXPENSE INCURRED IN PERFORMANCE OF DUTIES IN ACCORDANCE WITH THE STATUTES OF THIS STATE.**

**(10) EACH TRUSTEE OF THE RETIREMENT BOARD, CREATED BY THIS ACT, UPON ELECTION OR APPOINTMENT, SHALL TAKE AN OATH OF OFFICE WHICH SHALL BE IMMEDIATELY FILED WITH THE GOVERNING BODY OF THE MUNICIPALITY.**

**(11) THE RETIREMENT BOARD SHALL BE THE TRUSTEES OF THE MONEY AND OTHER ASSETS OF THE RETIREMENT SYSTEM AND SHALL HAVE FULL POWER AND AUTHORITY TO INVEST AND REINVEST THE MONEY AND OTHER ASSETS OF THE RETIREMENT**

SYSTEM SUBJECT TO ALL TERMS, CONDITIONS, LIMITATIONS, AND RESTRICTIONS IMPOSED ON THE INVESTMENT OF ASSETS OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS BY ACT NO. 314 OF THE PUBLIC ACTS OF 1965, BEING SECTIONS 38.1132 ET SEQ. OF THE MICHIGAN COMPILED LAWS AS AMENDED. ALL MONEY AND OTHER ASSETS OF THE RETIREMENT SYSTEM SHALL BE HELD AND INVESTED FOR THE SOLE PURPOSE OF MEETING DISBURSEMENTS AUTHORIZED UNDER THIS ACT AND SHALL BE USED FOR NO OTHER PURPOSE.

(12) IN EXERCISING ITS DISCRETIONARY AUTHORITY WITH RESPECT TO THE ADMINISTRATION, MANAGEMENT AND OPERATION OF THE RETIREMENT SYSTEM, THE RETIREMENT BOARD SHALL EXERCISE THE CARE, SKILL, PRUDENCE AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING, THAT A PERSON OF PRUDENCE, ACTING IN A LIKE CAPACITY AND FAMILIAR WITH SUCH MATTERS, WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF LIKE CHARACTER WITH LIKE AIMS.

(13) THE RETIREMENT BOARD SHALL ADOPT THE EXPERIENCE TABLES WHICH ARE NECESSARY FOR THE OPERATION OF THE RETIREMENT SYSTEM ON THE ACTUARIAL BASIS IN ACCORDANCE WITH THE STATUTES OF THIS STATE. SUFFICIENT DATA AND INFORMATION SHALL BE KEPT BY THE RETIREMENT SYSTEM TO FACILITATE THE ACTUARIAL INVESTIGATIONS OF THE ACTUAL EXPERIENCE OF THE RETIREMENT SYSTEM.

(14) THE RETIREMENT BOARD SHALL BE AUTHORIZED TO ADOPT AND ADMINISTER THOSE PROVISIONS REQUIRED TO MAINTAIN THE QUALIFIED STATUS OF THE RETIREMENT SYSTEM IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE INTERNAL REVENUE CODE.

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**Section 3. Who Is the Custodian of Plan Assets?**

“**Treasurer** of the municipality shall be the **Custodian of all funds of the retirement system** and shall be required to give good and sufficient **bond** to the Retirement Board . . . Treasurer shall issue **warrants** for the disbursement of the funds of the retirement system upon the receipt of a **voucher** signed by at least two members of the retirement board, other than the treasurer”.

In practice, Boards often retain the services of a third party Custodian to hold the assets in trust. This authority is granted not only in Section 2(2) of the Act, but is authorized in Public Act 314 of 1965, as amended, which provides in Section 13(4) that “an investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other services necessary for the conduct of the affairs of the system; and may pay reasonable compensation for those services”. The retention of a custodian should be reflected in the Board’s minutes and the relationship should be clearly defined in a written agreement.

**38.553 Retirement system funds; ~~treasurer as custodian; bond; disbursement of funds; execution of voucher or warrant; authorization.~~**

The treasurer of the city, village, or municipality shall be the custodian of all funds of the retirement system, **EXCEPT AS TO SUCH ASSETS AS THE RETIREMENT BOARD MAY FROM TIME TO TIME OTHERWISE HOLD, OR DIRECT TO BE HELD BY A THIRD PARTY CUSTODIAN, AS AUTHORIZED BY STATE LAW. THE TREASURER AND TRUSTEES** shall be required to give a good and sufficient bond to the retirement board for the **THEIR** 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 **CUSTODIAN** shall issue warrants for the disbursement of **DISBURSE** the funds of the retirement system upon the receipt of a ~~voucher~~ signed **AUTHORIZATION** by at least 2 members **TRUSTEES** of the retirement board other than the treasurer. The treasurer **CUSTODIAN** shall not ~~execute a voucher or warrant~~ **TRANSFER ANY ASSETS OF THE RETIREMENT SYSTEM** unless the ~~voucher or warrant~~ has been previously authorized by resolution adopted by the board.

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**Section 4. What is Service Credit?**

Credited Service means the sum of the prior service and membership service credited to the member's service account and is the time on which a pension benefit will be calculated.

**38.554 Credit for prior service.**

All service performed by members prior to the enactment of this act by ~~any city, village or township~~, including service performed for predecessor townships **A MUNICIPALITY**, shall be computed to the credit of each member so affected; **PROVIDED, SUCH SERVICE OTHERWISE MEETS THE REQUIREMENTS FOR SERVICE CREDIT UNDER THIS ACT.**

**MEMBERSHIP SERVICE TO WHICH A MEMBER IS ENTITLED, INCLUDING PERIODS DURING WHICH A MEMBER IS IN RECEIPT OF WORKER'S COMPENSATION WEEKLY BENEFITS, SHALL BE CREDITED TO THE MEMBER'S INDIVIDUAL SERVICE ACCOUNT. CREDIT FOR SERVICE SHALL BE DETERMINED BY APPROPRIATE RULES AND REGULATIONS OF THE RETIREMENT BOARD, BUT NOT MORE THAN 1 YEAR OF SERVICE SHALL BE CREDITED A MEMBER ON ACCOUNT OF ALL SERVICE RENDERED IN ANY PERIOD OF 12 CONSECUTIVE MONTHS. NOT MORE THAN 1/12 OF A YEAR OF SERVICE SHALL BE CREDITED A MEMBER ON ACCOUNT OF ALL SERVICE RENDERED IN A CALENDAR MONTH. SERVICE SHALL NOT BE CREDITED FOR ANY CALENDAR MONTH DURING WHICH A MEMBER ACQUIRES LESS THAN 10 DAYS OF SERVICE OR A SPECIFIED NUMBER OF HOURS OF WORK, AS DEFINED BY THE MUNICIPALITY.**

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**Section 5. How Are Actions of the Board Reviewed? What Is a Writ of Certiorari?**

Act 345 currently provides in Section 5 that the Board’s actions shall be reviewable by:

**“Writ of Certiorari Only”**

However, Writs of Certiorari have been replaced by **“Orders of Superintending Control”**.

Superintending Control refers to the authority of the Circuit Courts to review the decisions of the Board of Trustees. The Board is a quasi-judicial body, therefore, the scope of judicial review is limited, and courts will not substitute its judgment or discretion for that of a retirement board and may not reverse or disturb the board's decision except for want of jurisdiction, fraud, bad faith, abuse of discretion or arbitrariness. O’Connell v. Rese, 334 Mich. 208 (1954)

In recognition of this review standard, Boards should take steps to ensure that its decisions are based upon thorough review of the facts, that the process is consistent and well documented, and that due process is observed.

**38.555 Retirement board; quasi-judicial body; review of actions by ~~writ of certiorari~~:**

The board shall be a quasi-judicial body, and its actions shall be reviewable **SUBJECT TO REVIEW ONLY** by ~~writ of certiorari only~~ **ORDERS OF SUPERINTENDING CONTROL**.

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**Section 6(1). At What Age May a Member Retire?**

Section 6(1)(a) provides for retirement at age 55 with 25 years of service. However, this section goes on to provide that “upon the approval of the legislative body . . . 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.”

The drafting of this section may create confusion regarding the age upon which a member may retire. However, the specific language appears to conclude that a member with 25 years of service may retire: (1) at age 50, or (2) may retire prior to age 50 with approval of the municipality’s governing body.

Section 6(1)(b) provides that a member who is age 60 may be retired “upon the application of the legislative body, or . . . head of the department in which the member is employed”. This provision gives the employer the option to require mandatory retirement (which is allowed by a public safety exception to the Age Discrimination in Employment Act). While this section does not specifically address service credit, the Act as a whole would indicate that a member must have a minimum of 10 years of service credit to be eligible for a benefit.

Section 6(1)(c) requires retirement at age 65.

Finally, Section 6(1)(d) provides that a member with 10 years of service, who separates from service prior to retirement, may begin receipt of benefits upon application and after the date upon which the member would have retired had the member continued in employment.

### **38.556 Age and service retirement benefits.**

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

(a) **REGULAR RETIREMENT.** A member who is: **(1) 60 YEARS OF AGE OR OLDER, AND WHO HAS 10 OR MORE YEARS OF CREDITED SERVICE;** **(2) 55 50** years of age or older, and who has 25 or more years of **CREDITED** service; **(3) UNDER THE AGE OF 50 AND WHO HAS 25 OR MORE YEARS OF CREDITED SERVICE AND THE APPROVAL OF THE GOVERNING BODY OF THE MUNICIPALITY,** 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) **MANDATORY RETIREMENT.** A member who is 60 years of age or older **AND WHO HAS 10 OR MORE YEARS OF CREDITED SERVICE** shall be retired by the retirement board upon the written application of the legislative **GOVERNING** body, or board or official provided in the charter of the municipality as head of the department in which the member is employed **THE MEMBER'S DEPARTMENT HEAD.** 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) **MANDATORY RETIREMENT.** 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) **VESTED FORMER MEMBER.** 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; **UNLESS SUBJECT TO THE PUBLIC EMPLOYEE RETIREMENT BENEFIT PROTECTION ACT.** If the **A** member **WITH 10 OR MORE YEARS OF SERVICE** 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, **MEMBERSHIP IN THE RETIREMENT SYSTEM SHALL TERMINATE AND THE INDIVIDUAL SHALL BE A VESTED FORMER MEMBER,**



**PROVIDED THE MEMBER'S ACCUMULATED CONTRIBUTIONS HAVE NOT BEEN REFUNDED.** The **VESTED FORMER** member is entitled to a pension that shall begin the first day of the calendar month immediately after the month in which the **VESTED FORMER** member's written application for the pension is filed with the retirement board that is on or after the date the **VESTED FORMER** member would have been eligible to retire had the **VESTED FORMER** member continued in employment. **A VESTED FORMER MEMBER SHALL BE ENTITLED TO THE BENEFITS IN EFFECT AT THE TIME OF SEPARATION FROM SERVICE AND SHALL NOT BE ENTITLED TO ANY SERVICE CREDIT OR BENEFIT CHANGES ADOPTED AFTER SEPARATION FROM SERVICE.** The retirement board shall grant the **VESTED FORMER** member the benefits to which the **VESTED FORMER** member is entitled under this act, unless the **VESTED FORMER** member resumes service. If the **VESTED FORMER** member resumes service, **MEMBERSHIP SHALL RESUME AND** the member's pension shall be further deferred with service years of credit until the member actually retires.

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**Section 6(1)(e). What Is the Multiplier?**

Section 6(1)(e) states that the multiplier shall be 2% for the first 25 years of service and 1% for service thereafter. In addition, Act 345 provides that the governing body of the municipality may increase the 2% to a maximum of 2.5%; however, the Act contemplates that this change is only applicable to service up to 25 years. Special attention should be given to ordinances or collective bargaining agreements to clearly define the multiplier and to what service it is applicable.

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**Section 6(1)(f). What Is Average Final Compensation?**

Section 6(1)(f) provides that Average Final Compensation (AFC) shall mean 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. While this section acknowledges the ability of collective bargaining agreement to change the period from 5 years to 3 years out of 10, this Section fails to clearly define what constitutes a “Year” or “Compensation”. This issue has been a great source of discussion and has been clarified in many instances by collective bargaining agreement, past practice, Board policy, and/or by Court order/Arbitration award. It is recommended that this issue be clearly defined and understood to consistently administer the benefits.

(f) **AVERAGE FINAL COMPENSATION.** 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, **OR 3 CONSECUTIVE YEARS OF SERVICE UPON APPROVAL OF THE GOVERNING BODY,** 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 **OR 3 YEARS OF**

SERVICE, IF APPLICABLE, average final compensation means the annual average compensation received by the member during his or her total years of service.

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**Section 6(1)(g). How is Military Time Recognized?**

(g) INTERVENING MILITARY SERVICE. A member shall be given service credit AND SHALL NOT BE REQUIRED TO MAKE CONTRIBUTIONS for ACTIVE SERVICE 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.

DURING THE PERIOD OF ACTIVE SERVICE, AND UNTIL THE MEMBER RETURNS TO EMPLOYMENT, THE MEMBER'S CONTRIBUTIONS SHALL BE SUSPENDED AND THE BALANCE OF THE MEMBER ACCUMULATED CONTRIBUTIONS SHALL BE ACCUMULATED AT REGULAR INTEREST. IF THE MEMBER WITHDRAWS THE MEMBER'S ACCUMULATED CONTRIBUTIONS, THE SERVICE SHALL NOT BE CREDITED UNTIL THE MEMBER RETURNS TO THE FUND ALL AMOUNTS THE MEMBER WITHDREW, TOGETHER WITH REGULAR INTEREST COMPUTED FROM THE DATE OF WITHDRAWAL TO THE DATE OF REPAYMENT WHICH SHALL BE WITHIN 1 YEAR FOLLOWING THE MEMBER'S RETURN TO EMPLOYMENT.

Please Note: Intervening military service must be administered in accordance with the federal statute - Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. §4301 et seq.

PRIOR MILITARY 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 OR TO THE SURVIVING SPOUSE OF A DECEASED MEMBER FOR SERVICE NOT PREVIOUSLY PURCHASED BY THE MEMBER 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 OR 5% OF THE MEMBER'S FULL-TIME OR EQUATED FULL TIME COMPENSATION FOR THE LAST FISCAL YEAR IN WHICH THE DECEASED MEMBER WAS A MEMBER OF THE RETIREMENT SYSTEM. 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.

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**Section 6(1)(g).      How is Unpaid Leave Time Recognized?**

**DISABILITY LEAVE.** 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 non-service 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.

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**Section 6(1)(h).      What Forms of Benefits are Available?**

A member may designate a beneficiary who would continue receiving an allowance in case of death. The following forms of benefit allowances are provided in Act 345:

**Regular Retirement Pension (Straight Life Benefit)**

Upon the death of a retiree who is receiving a regular retirement pension, his/her spouse, if living, shall receive a pension for the remainder of the spouse's lifetime equal to 60% of the regular retirement pension the deceased retiree was receiving.

**NOTE:** "Spouse", for purposes of the 60% surviving spouse benefit, is defined as the person to whom the retired member is legally married on both the effective date of retirement and date of death.

**Option I: 100% Survivor Pension**

Upon the death of a retired member, his/her actuarially reduced retirement pension shall be continued throughout the life of and paid to a duly nominated survivor beneficiary.

**Option II: 50% Survivor Pension**

Upon the death of a retired member, 50% of his/her actuarially reduced retirement pension shall be continued throughout the life of and paid to a duly nominated survivor beneficiary.

Option benefits are computed to be the actuarial equivalent of a straight life pension. The amount of an Option form of retirement benefit is based upon the amount of an individual's straight life pension, the Option selected, and the ages of the individual and beneficiary.

An Option election must be made by a retiring member before the effective date of his/her retirement and not thereafter. Once a retiree receive retirement benefits, the individual may not change the option election (unless by divorce order) or designated beneficiary. An option beneficiary must have an insurable interest in the life of the retiring member. In general, this contemplates close blood relationships or relationships by marriage or some other special relationship or reasonable expectation of an advantage or pecuniary benefit from the continuance of the life of the insured.

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**Sections 6(1)(i) and (j). What Benefits Are Available to a Surviving Spouse?**

In the event a member dies after acquiring 20 years of service, an automatic Option I benefit shall be payable to a surviving spouse. In 1982, Act 345 was amended to provide the automatic Option I benefit to the surviving spouses of members with 15 years of service if the member was employed by a City with a population of 80,000 or more people. Please note that Public Act 8 of 2003, eliminated the provision which permitted a municipality with less than 80,000 residents, but which is “completely surrounded” by a city having a population of 80,000 or more, to elect to have the Option I benefits available to a surviving spouse of a member with 15 years of service.

After 25 years of service, a member may nominate an Option I beneficiary to receive a benefit in the event of death prior to retirement. Please note that if the beneficiary is someone other than the spouse, no surviving spouse benefits will be payable upon the member’s death. This election may be changed at time of retirement.

Further, Section 6(2) provides for duty death benefits to be paid a surviving spouse of a member who dies in the line of duty in an amount similar to and upon termination of benefits under the Worker’s Disability Compensation Act.

It should be noted that the Option I benefit of Section 6(1)(i) and duty death benefit of Section 6(2) may create a practical problem in the event of different benefit amounts or conflicting interests in a survivor benefit. Consideration of such issues should be given prior to issuing a pension benefit since Act 345 provides that if benefits are paid under section 6(2) no automatic option I benefits will be payable under Section 6(1)(i).

Finally, if an individual retires with an age and service retirement and does not elect an Option I or Option II, a surviving spouse (who was spouse at time of retirement and time of death) will be eligible to receive 60% of the retiree’s “regular retirement” benefit. While a member may nominate a spouse as an option beneficiary, the member would receive a reduced pension amount, whereas the 60% surviving spouse benefit is at no cost to the member.

It should be noted that there is some ambiguity with respect to the availability of surviving spouse benefits to disability retirees in the event of their death before or after age 55. While it is clear that a disability retiree may elect an Option I or Option II benefit upon attainment of age 55 and nominate a spouse as option beneficiary, it is less settled whether the 60% surviving spouse benefit is applicable to a disability retiree who does not elect an option benefit. Further, courts have found that no automatic Option I or 60% surviving spouse benefit is available in the event a disability retiree dies prior to age 55. Therefore, consideration of this issue should be given in order to reflect the intention of the parties (i.e., employer, union, members, potential beneficiary) and to consistently administer the benefits.

**(i) SURVIVING SPOUSE BENEFIT**. If a member continues in service on or after the date of acquiring ~~20~~ **15** 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. **UNLESS OTHERWISE PROVIDED**, 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) **OPTION I SURVIVOR BENEFIT**. A member who continues in service on or after the date of acquiring 25 years of service credit **OR WHO OTHERWISE MEETS THE REQUIREMENTS FOR RETIREMENT UNDER SECTION 6(1)(a)** 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.

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### **Section 6(1)(k). How Does a Divorce Effect a Pension Benefit?**

Public Act 46 of 1991 ("Act 46") mandates that an Act 345 retirement system comply with Eligible Domestic Relations Orders (EDROs) issued by state courts. Act 46 authorizes the courts to allocate the marital portion of a participant's pension among the parties. Accordingly, an EDRO may require a retiring member to select an option and name his/her ex-spouse as the designated beneficiary. However, a Domestic Relations Order entered after the effective date of a retiring member's retirement may not require a change in retirement form, a change in designated beneficiary, or reach the benefit of a non-spousal option beneficiary.

A domestic relations order meeting all the requirements of Public Act 46 of 1991 may change the definition of "spouse" for purposes of the 60% surviving spouse benefit.

A member may name an ex-spouse as option beneficiary prior to his/her retirement. Option beneficiaries may not be changed after the participant has retired. If the divorce occurs after retirement, and the ex-spouse was previously designated as an option beneficiary, he/she will continue to be the option beneficiary; unless removed pursuant to a court order. In the event the option election is considered void by court order, the retiree's pension shall revert to a regular retirement pension.

**NOTE:** Public Act 46 of 1991 requires that an EDRO be submitted prior to retirement.

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**Sections 6(2)(a), (b), and (c). What Death Benefits are Provided?**

If an active member should die prior to his/her retirement as a result of a personal injury or disease arising out of and in the course of employment with the municipality, benefits will be payable to a surviving spouse, surviving children under the age of 18 years and/or other surviving dependents. Generally, the amount of the death benefits would be equal to the worker's compensation benefits and would be payable when worker's compensation benefits have expired. Children benefits terminate upon attainment of age 18 years, adoption, marriage or death; and other surviving dependents until the Board determines that the need for benefits no longer exists.

If a member continues in the employ of the municipality after he/she has acquired ten (10) or more years of credited service, and should die (non-duty death), his/her surviving spouse would receive an Option I benefit calculated as of the day preceding the date of the member's death.

A member who continues in the employ of the municipality after he/she has acquired twenty five (25) or more years of credited service may elect an Option I benefit and nominate a survivor beneficiary (other than a spouse) whom the Board finds to be dependant upon the member for at least 50% of the beneficiary's support. Upon the death of said member, his/her named beneficiary would receive an Option I benefit calculated as of the day preceding the date of the member's death.

Please note: A member may change an option election pursuant to this section prior to retirement.

Should a member die prior to satisfying the eligibility requirements as detailed above (i.e., 10 years service credit), no pension benefits would be payable, but any accumulated contributions standing to the member's credit at the time of death would be paid to the member's designated beneficiary.

**(a) SURVIVING SPOUSE DUTY DEATH BENEFIT. IF DEATH RESULTS TO A MEMBER IN THE LINE OF DUTY, A DUTY DEATH PENSION SHALL BE PAID TO** ~~To a surviving spouse, a duty death pension of~~ **IN** 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.

**PRIOR TO RECEIPT OF ANY BENEFITS UNDER THE WORKER'S DISABILITY COMPENSATION ACT, A SURVIVING SPOUSE OF A MEMBER WHOSE DEATH IS IN THE LINE OF DUTY MAY ELECT TO WAIVE ALL BENEFITS UNDER THE WORKER'S DISABILITY COMPENSATION ACT AND RECEIVE A PENSION BENEFIT UNDER SECTION 6(1)(I) WITH THE PENSION BENEFIT BEING OFFSET BY ANY BENEFITS PAID UNDER SECTIONS 6(2)(B) OR (C).**

(b) **SURVIVING CHILD DUTY DEATH BENEFIT.** 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) **SURVIVING DEPENDENT DUTY DEATH BENEFIT.** 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.

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### **Sections 6(2)(d) and (f).     How Are Disability Benefits Reviewed?**

Act 345 requires the determination of disability to be made by a medical committee consisting of the member's doctor, the Board's doctor, and a mutually selected doctor. However, if the member's doctor and the Board's doctor agree in their conclusions, prudence may dictate that incurring costs for a third examination would be unnecessary. Therefore, disability examination procedures may be designed to consider this possibility.

Further, Act 345 requires the determination of a medical committee for establishing eligibility for disability, but only requires the examination of the Board's doctor to determine continued eligibility. This may place a Board in a position of (1) granting a disability benefit based upon the findings of the member's doctor and the mutually selected doctor (in which conclusion the Board's doctor does not concur); (2) subsequently terminating a pension based upon the Board's doctor's findings upon re-examination that the individual is no longer disabled; and (3) having the reinstated member file another application for disability retirement, consideration of which is subject to a medical committee. Boards may want to design an appeal process which addresses this situation.

Finally, Section 2(5) provides that the Board **shall** cause the examination of each disability retiree less than 55 years of age to be made at least once a year for the first five years and at least once each three years thereafter until the retiree attains age 55. However, Section 6(2)(f) provides that the Board **may** require such re-examinations. While it is clear that a retiree may request an examination, there is potential for confusion as to when and if the Board is "required" by Act 345 to have a disability retiree re-examined. In light of the fiduciary standards contained in the Act, Board's are provided deference in interpreting the frequency and necessity of examination. Language in Act 345 which states "at least once in a year" would allow a Board to re-examine a disability retiree more than once a year, and on the other hand, a disability retiree's catastrophic injury may render returning to employment an impossibility. Therefore, prudence should serve as a guide in determining how re-examinations are to be conducted with the understanding that the Act intended an ongoing and periodic review of disability retirees to ensure that those who continue to be disabled continue to receive benefits, and those who do not, do not.

(d) **DUTY DISABILITY RETIREMENT**. 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 **IF NECESSARY**, 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 **DISABILITY RETIRANT** 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. **IF A DISABILITY RETIRANT WHO RETIRED UNDER THIS SUBDIVISION DIES BEFORE ATTAINING 55 YEARS OF AGE, THE DISABILITY RETIRANT'S SURVIVING SPOUSE, AS DEFINED IN SECTION 6(1)(H), SHALL RECEIVE A SURVIVING SPOUSE PENSION BENEFIT PROVIDED FOR IN SECTION 6(1)(I)**. Upon becoming 55 years of age, the disabled member shall receive a disability retirement pension computed according to subsection (1)(e) **AND IN ACCORDANCE WITH THE BENEFIT PROVISIONS IN EFFECT AT THE TIME THE DISABLED MEMBER SEPARATED FROM SERVICE** In computing the disability retirement pension, the member **DISABILITY RETIRANT** 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) **NON-DUTY DISABILITY RETIREMENT**. 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 **IF NECESSARY** 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 **DISABILITY RETIRANT** who has not



attained 55 years of age shall receive a disability retirement pension until the ~~member~~ **DISABILITY RETIRANT** 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. **IF A DISABILITY RETIRANT WHO RETIRED UNDER THIS SUBDIVISION DIES BEFORE ATTAINING 55 YEARS OF AGE, THE DISABILITY RETIRANT'S SURVIVING SPOUSE, AS DEFINED IN SECTION 6(1)(H), SHALL RECEIVE A SURVIVING SPOUSE PENSION BENEFIT PROVIDED FOR IN SECTION 6(1)(I).** Upon becoming 55 years of age, the ~~member's~~ **DISABILITY RETIRANT'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 **DISABILITY** 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) **DISABILITY RE-EXAMINATION.** 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~~ **DISABILITY RETIRANT'S** application shall, require a ~~retired member~~ **DISABILITY RETIRANT** 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~~ A MEDICAL COMMITTEE AS ESTABLISHED UNDER SECTION 6(2)(D), ~~designated by the retirement board,~~ at the place of residence of the ~~retired member~~ **DISABILITY RETIRANT** or other place mutually agreed upon. If a ~~retired member~~ **DISABILITY RETIRANT** who has not attained 55 years of age refuses to submit to the medical examination in the period, the ~~member's~~ **DISABILITY RETIRANT'S** disability retirement pension may be discontinued by the retirement board. If the ~~member's~~ **DISABILITY RETIRANT'S** refusal continues for 1 year, all the ~~member's~~ **DISABILITY RETIRANT'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~~ **DISABILITY RETIRANT** the ~~physician~~ **MEDICAL COMMITTEE** reports to the retirement board that the ~~retired member~~ **DISABILITY RETIRANT** is physically capable of resuming employment in the classification held by the ~~member~~ **DISABILITY RETIRANT** at the time of retirement, the ~~member~~ **DISABILITY RETIRANT** 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~~ **MEDICAL COMMITTEE** is concurred in by the retirement board. A ~~retired member~~ **DISABILITY RETIRANT** 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 **UNDER SECTION 6(1) OR 6(2)** 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.

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**Section 6(2)(d) and (e).      How Are Disability Benefits Calculated?**

Act 345 provides for a duty disability benefit of 50% of compensation until such time as the member attains age 55. At age 55, the disability benefit will be re-computed based upon a service formula which will include service credit for the time on duty disability retirement.

Please note that courts have determined that under Act 345 a disability retiree does not “retire” at the time benefits are recalculated (i.e., age 55), but rather at the effective date of disability retirement. The retirement, while recalculated based upon a service formula, remains a disability retirement. The individual’s pension is based on the benefits in effect at the time of the disability retirement (e.g., multiplier, compensation, etc), not those in effect at the time the individual attains age 55. The benefit continues to be a disability retirement, however, the member is no longer subject to re-examination.

**(g) RECOMPUTATION OF DISABILITY PENSION.** Within 60 days before a member **DISABILITY RETIRANT** 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~~ **DISABILITY RETIRANT** fails to elect an option, as provided in this subdivision, before becoming 55 years of age or before retirement, the ~~member's~~ **DISABILITY RETIRANT’S DISABILITY** retirement pension shall be paid to the member as a regular disability pension terminating at death. **UPON THE DEATH OF A DISABILITY RETIRANT WHO WAS RECEIVING A REGULAR DISABILITY PENSION, THE SURVIVING SPOUSE OF THAT DECEASED DISABILITY RETIRANT, AS DEFINED IN SECTION 6(1)(I), SHALL RECEIVE A SURVIVOR SPOUSE DISABILITY PENSION EQUAL TO 60% OF THE DISABILITY PENSION PAYABLE TO THE DISABILITY RETIRANT ON THE DATE OF THE DISABILITY RETIRANT’S DEATH.** If a ~~disabled member~~ **DISABILITY RETIRANT** 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 **DISABILITY RETIRANT** 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~~ **DISABILITY RETIRANT'S** legal representative or estate.

Further, Section 6(2)(e) provides a disability retirement benefit for a member with 5 years of service credit in the event of non-duty related injury. The benefit is based upon a multiplier of 1.5%. The benefit is recalculated at age 55 at a multiplier of 2%; however, no additional service credit is granted. Please note that a change in the service multiplier from 2% to 2.5% may not be applicable to non-duty disability retirees at age 55, unless specifically provided.

As indicated above, consideration should be given to the survivor benefits, if any, payable in the event of a disability retiree's death, before or after age 55.

Finally, it should be noted that there is some ambiguity with respect to the availability of surviving spouse benefits to disability retirees in the event of their death before or after age 55. While it is clear that a disability retiree may elect an option I or option II benefit upon attainment of age 55 and nominate a spouse as option beneficiary, it is less settled whether the 60% surviving spouse benefit is applicable to a disability retiree who does not elect an option benefit. Further, courts have found that no automatic option I or 60% surviving spouse benefit is available in the event a disability retiree dies prior to age 55. Therefore, consideration should be given to this issue.

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**Section 6(2)(f). May Disability Retirement Benefits Be Reduced?**

While retirement benefits are protected by Article 9, Section 24 of the Michigan Constitution from diminishment or impairment, Act 345 provides for the offset of "benefits" for "amounts paid" under the Worker's Disability Compensation Act. Consideration should be given as to what "benefits" are subject to offset (i.e., service, disability or both), as well as what constitutes "amounts paid" (e.g., treatment of lump-sum redemption amounts) for purposes of the offset.

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**Section 6b. What is a Remarriage "Penalty"?**

**38.556b Remarriage of surviving spouse; applicability of subsection (1) to municipality.**

A surviving spouse of a member who dies in the line of duty may receive a pension similar to and upon termination of benefits under the Worker's Disability Compensation Act. However, said benefit historically was payable until the spouse's remarriage. Certain municipalities determined that this remarriage "penalty" was against public policy and have taken affirmative steps to amend their plans as permitted under Section 6b of Act 345. Effective May 20, 2003, the remarriage penalty has been eliminated for duty death benefits, pursuant to Public Act 8 of 2003.

## **Section 6d. May Benefit Be Changed after Retirement?**

### **38.556d ~~Postretirement~~ Adjustments increasing retirement benefits.**

Act 345 provides that a municipality may adopt from time to time benefit programs providing for post-retirement adjustments increasing retirement benefits. The Michigan State Constitution does not permit decreases to accrued pension benefits.

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## **Section 6e. What Benefits Are Available to Union vs. Non-Union Members?**

### **38.556e Mandatory subjects of bargaining.**

While the Statute provides for the adoption of Act 345, it does not clearly address the amendment of the provisions once it is established. Generally, the terms and conditions of Act 345 control. Act 345 provides specific instances where the governing body may modify the benefits and acknowledges that the Act may be amended by collective bargaining agreement, pursuant to the Public Employment Relations Act. Therefore, union members are often provided benefits which are not addressed in Act 345 (i.e., multipliers above 2.5%; 3 of 5 years AFC; inclusion of various amounts in AFC compensation; service purchases; benefit pop-up; sum-certain benefits, or other optional benefits). However, for non-union employees, who are not afforded the flexibility under Act 345 for collectively bargained changes to benefits, the benefits and limitations provided in Act 345 may have unintended consequences, especially for members promoted out of union positions.

While municipalities have resolved such benefit issues through various methods (collective bargaining, ordinance amendment, alternative benefit structures), this issue should be addressed by individual plans or through statutory amendment to eliminate any confusion.

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## **Section 7. How Are Terms Defined?**

### **38.557 ~~“An act of duty,” “municipality” and “transitional public employment program” defined~~ DEFINITIONS.**

Special attention should be given to understanding and clarifying specific terms referenced in Act 345 and the applicable collective bargaining agreements.

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## **Section 8. What If a Member Separates from Service Prior to Retirement Eligibility?**

If a member has acquired ten (10) or more years of credited service, and separates from the service of the municipality prior to attainment of the age and service retirement requirements, for any reason except retirement or death, he/she may remain a deferred vested member of the Retirement System and is entitled to receive retirement benefits upon the date the member would have been eligible to retire had the member continued in employment; provided the member did not withdraw his/her accumulated contributions at the time of separation.

If a member does not satisfy the above eligibility requirements, he/she will receive a refund of his/her accumulated contributions, plus interest.

When a member withdraws his/her contributions, that member no longer is entitled to membership in the Retirement System nor service credit. If that member becomes re-employed by the municipality, the member may have prior service reinstated by paying the Retirement System within one year following his/her re-employment the total amount previously withdrawn plus interest from the dates of withdrawal to the dates of repayment.

### **38.558 Refunds of salary contributions.**

Refunds of ~~salary~~ contributions:

(1) If a fire fighter or police officer dies before ~~being placed on pension~~ **RETIREMENT**, the total amount of the member's ~~salary deductions~~ **ACCUMULATED CONTRIBUTIONS**, ~~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~~ **ACCUMULATED CONTRIBUTIONS** 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 **ACCUMULATED** 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~~ **AND SERVICE CREDIT SHALL BE FORFEITED**. If the person again becomes employed by the ~~city, village, or municipality~~ as a police officer or fire fighter, **HIS OR HER PRIOR SERVICE CREDIT SHALL BE RESTORED IF** he or she shall, within 1 year following his or her re-employment, repay to the retirement system the amount previously withdrawn together with interest at 2% per year.

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## **Section 9. Who Determines Plan Contributions and Expenditures?**

While Section 9 may not succinctly answer this question, it is clearly established at law that the Retirement Board has the authority and the responsibility to determine the required contribution amounts after consultation with its actuary. Further, while Act 345 provides that plan expenses may be paid by the municipality, the Board has the discretion to retain services for the plan and pay reasonable costs with plan assets.

**38.559 Contributions of member; rate; deduction from salary COMPENSATION; appropriations to maintain actuarially determined reserves; payment of deductions and appropriations into retirement system; prorating pensions and other benefits; expenses; pensions as obligations of retirement system.**

(1) The contributions of a member to the retirement system shall be 5% of the ~~salary~~ **COMPENSATION** paid to the member by the municipality. The officer responsible for making up the payroll shall cause the contributions provided for in this subsection to be deducted from the ~~salary~~ **COMPENSATION** of each member on each payroll for each payroll period so long as he or she remains an active member in the employ of the municipality. The amounts deducted shall be paid into the funds of the retirement system **AND SHALL BE CREDITED TO THE MEMBER'S ACCUMULATED CONTRIBUTION ACCOUNT WITH INTEREST AS THE RETIREMENT BOARD MAY DETERMINE, BUT NOT TO EXCEED 2% PER ANNUM.** The members' contributions provided for in this act shall be made notwithstanding that the minimum salary provided for by law is changed by the members' contributions. Every member shall be considered to consent and to agree to the deductions made and provided for in this act and shall receipt for his or her full salary and payment of his or her salary less the deduction, which is a full and complete discharge and acquittance of all claims and demands for the services rendered by the member during the period covered by the payment, except as to benefits provided by this retirement system.

(2) For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, the amount required by taxation to meet the appropriations to be made by municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963.

(3) If, at the beginning or during any fiscal year, it has been satisfactorily determined by the retirement board that the accumulated funds of the retirement system plus the municipality's contribution of 10% of the aggregate pay received during that fiscal year by members of the retirement system plus members' contributions of 5% of payroll, are insufficient to pay all pensions and other benefits due and payable in that year out of funds of the retirement system, then all pensions and other benefits payable shall be prorated for the remainder of the fiscal year by the retirement board.

(4) Any clerical, legal, actuarial, **INVESTMENT** or medical expenses required by the retirement board, or any other necessary expense for the operation of the retirement system, shall be provided for by the municipality or shall be paid from the investment income of the retirement system, as determined by the governing body of the municipality **RETIREMENT BOARD**. ~~The retirement board shall submit expenses periodically to the governing body of the municipality.~~ If use of investment income to pay these expenses causes an actuarial insufficiency in the assets of the retirement system used to pay pensions, the insufficiency shall be made up by the municipality.

(5) All pensions allowed and payable to retired members and beneficiaries under this act shall become obligations of and be payable from the funds of the retirement system.

(6) The right of a person to a pension, to the return of member contributions, to any optional benefits, or any other right accrued or accruing to a member or beneficiary under this act and the money belonging to the retirement system is subject to the public employee retirement benefit protection act.

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## **Section 10. How Are Plan Assets Invested?**

The Board of Trustees is responsible for the proper operation of the Retirement System. Investment of all Retirement System assets is made by the Board of Trustees in accordance with investment guidelines, as authorized by state law.

### **38.560 Investments; transfer and disposition of certain assets.**

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.

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## **Section 11. How is an Act 345 Plan Established?**

### **38.561 Referendum; township or charter township.**

At any time after this act shall become effective, any city, village or municipality having a paid ~~or part paid~~ fire or police department, may come under the provisions of this act and create a pension board hereunder by submitting the same to the electors of any such city, village or municipality at any regular or special election for

adoption, in the manner provided by law for amending charters: Provided, that this act shall not become effective until the beginning of the next succeeding fiscal year after such adoption of the provisions of this act by any city, village or municipality: Provided further, that where no provision is made in the charter of the city, village or municipality for amending said charters, this act may be submitted for adoption in accordance with any law authorizing the amending of the charters of cities: Provided further, that in case of a township or charter township, this act shall be submitted to the qualified electors of such township or townships by the township board on the filing of a petition requesting the submission, signed by 10 percent of the registered and qualified electors in such township or charter township, at any general election or special election called for that purpose by the township board, in accordance with the laws of this state, and this act shall be in force and effect in any such township or charter township if a majority of the electors voting on such proposition, as determined by the canvass of votes cast, shall vote in favor thereof.

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## **Section 12    Who is a Member?**

Act 345 simply provides that membership shall include each police officer and fire fighter employed by a municipality. While the Act contains certain exceptions, the language in the section has created some confusion. There should be a clear and well documented understanding of the eligibility requirements of your Police and Fire Retirement System which addresses membership, service credit and re-employment issues.

### **38.562 Membership of retirement system.**

(1) The membership of the retirement system created by a municipality affected by this act shall include each **FULL TIME** police officer and fire fighter employed by a municipality. A police officer or fire fighter, who is a member of the retirement system and who is transferred from the classification of a police officer or fire fighter to a civilian position within the police or fire department or who is transferred from the police or fire department of the municipality to another department of the municipality by an officer or body of the municipality authorized to make the transfer, shall continue as a member of this retirement system covering the police officers and fire fighters, and shall be subject to the provisions of the retirement system. If the officers and employees of the department to which the person is transferred are covered by an annuity pension or retirement system to which the municipality makes contributions and the person transferred becomes entitled to membership in that system, the person shall cease to be a member of this police officer and fire fighter retirement system.

(2) The membership of the retirement system shall not include a volunteer fire fighter, a privately employed police officer or fire fighter, a person temporarily employed during an emergency, a civilian employee of a police and fire department, ~~or~~ a person participating in a transitional public employment program, except as provided in subsection (1) and section 6c. **MEMBERSHIP SHALL NOT INCLUDE PART TIME EMPLOYEES, VESTED FORMER MEMBERS, OR RETIREES OF THE RETIREMENT SYSTEM.**



**(3) A MEMBER WHO IS IN RECEIPT OF WORKER'S COMPENSATION WEEKLY BENEFITS ON ACCOUNT OF AN EMPLOYMENT-RELATED INJURY SHALL CONTINUE TO BE A MEMBER AND RECEIVE CREDITED SERVICE UNTIL THE EARLIEST OF TERMINATION OF EMPLOYMENT, RETIREMENT OR DEATH.**

**(4) IN CASE OF DOUBT, THE RETIREMENT BOARD SHALL DECIDE WHO IS A MEMBER.**

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**Who is an Act 345 Retirement System?**

1. Albion Public Safety Pension System
2. Battle Creek Police and Fire
3. Benton Township Fire/Police
4. Berkley Public Safety Retirement System
5. Big Rapids Police and Fire Retirement System
6. Cadillac Police and Fire Retirement System
7. Center Line Police and Fire Pension System
8. Clinton Township Fire and Police Pension System
9. Dearborn Heights Police and Fire Retirement System
10. Escanaba Public Safety Retirement
11. Flint Township Firefighters Retirement System
12. Gibraltar Police and Fire Pension System
13. Harrison Township Firemen's Pension System
14. Ironwood Police and Fire Retirement System
15. Iron Mountain Police and Fire Retirement System
16. Ishpeming Police and Fire Retirement System
17. Jackson Act 345 Retirement System
18. Kingsford Police and Fire Retirement System
19. Ludington Police Pension Fund
20. Macomb Township Act 345 Fire Retirement System
21. Madison Heights Police and Fire Retirement System
22. Menominee Police and Fire Retirement System
23. Marquette Fire and Police Retirement System
24. Midland County Act 345
25. Midland Police and Fire Retirement System Act 345
26. Mount Pleasant Police and Fire Retirement System
27. Negaunee Policemen's Retirement System
28. Niles Township Fire and Police Retirement System
29. Redford Township Police and Fire Retirement System
30. St. Clair Shores Police and Fire Retirement System
31. Sault Ste Marie Police and Fire Retirement System
32. Charter Township of Shelby Police and Fire Retirement System
33. Southfield Fire and Police Retirement System
34. Southgate Police and Fire Pension Board
35. Springfield Public Safety Retirement System
36. Sterling Heights Police and Fire Retirement System

37. Taylor Police and Fire Retirement System
  38. Traverse City Act 345 Police and Fire Retirement System
  39. Trenton Fire and Police Pension System
  40. Utica Police and Fire Retirements System
  41. Warren Police and Fire Retirement System
  42. Waterford Township Police and Fire Retirement System
  43. Westland Police and Fire Retirement System
  44. Ypsilanti Fire and Police Retirement System
  45. Ypsilanti Township Police and Fire Retirement System
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## **CONCLUSION**

While some municipalities have resolved the inconsistencies of Act 345 or have expanded the benefits provided by Act 345 through various methods (collective bargaining, ordinance amendment, alternative benefit structures), it is hoped that a comprehensive review of the statute would provide greater consistency among retirement systems, and minimize/alleviate the need to fix problems on a case by case basis (often in a reactionary environment and through costly litigation).

## **IMPORTANT NOTE**

This memorandum reflects various issues which have appeared before Boards in their administration of Act 345. These comments are not intended to create, expand, reduce, or eliminate any benefits provided under your Plan by Act 345, collective bargaining, or past practice, but are offered to facilitate discussion regarding topics which may serve to improve the administration of police and fire pension benefits in general. The information contained in this session is not intended to be legal advice. Please refer to your plan provisions in addressing specific questions. Thank you.