



Rep. Grant Wehrli

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LRB100 04239 RPS 25511 a

1 AMENDMENT TO HOUSE BILL 418

2 AMENDMENT NO. _____. Amend House Bill 418 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by
5 changing Sections 3-109.1, 3-124.1, and 7-109 and by adding
6 Section 3-109.4 as follows:

7 (40 ILCS 5/3-109.1) (from Ch. 108 1/2, par. 3-109.1)

8 Sec. 3-109.1. Chief of police.

9 (a) Except as provided in subsection (a-5), beginning
10 ~~Beginning~~ January 1, 1990, any person who is employed as the
11 chief of police of a "participating municipality" as defined in
12 Section 7-106 of this Code, may elect to participate in the
13 Illinois Municipal Retirement Fund rather than in a fund
14 created under this Article 3. Except as provided in subsection
15 (b), this election shall be irrevocable, and shall be filed in
16 writing with the Board of the Illinois Municipal Retirement

1 Fund.

2 (a-5) On or after January 1, 2019, a person may not elect
3 to participate in the Illinois Municipal Retirement Fund with
4 respect to his or her employment as the chief of police of a
5 participating municipality, unless that person became a
6 participating employee in the Illinois Municipal Retirement
7 Fund before January 1, 2019.

8 (b) Until January 1, 1999, a chief of police who has
9 elected under this Section to participate in IMRF rather than a
10 fund created under this Article may elect to rescind that
11 election and transfer his or her participation to the police
12 pension fund established under this Article by the employing
13 municipality. The chief must notify the boards of trustees of
14 both funds in writing of his or her decision to rescind the
15 election and transfer participation. A chief of police who
16 transfers participation under this subsection (b) shall not be
17 deemed ineligible to participate in the police pension fund by
18 reason of having failed to apply within the 3-month period
19 specified in Section 3-106.

20 (Source: P.A. 90-460, eff. 8-17-97.)

21 (40 ILCS 5/3-109.4 new)

22 Sec. 3-109.4. Defined contribution plan for certain police
23 officers.

24 (a) Each municipality shall establish a defined
25 contribution plan that aggregates police officer and employer

1 contributions in individual accounts used for retirement. The
2 defined contribution plan, including both police officer and
3 employer contributions, established by the municipality must,
4 at a minimum: meet the safe harbor provisions of the Internal
5 Revenue Code of 1986, as amended; be a qualified plan under the
6 Internal Revenue Code of 1986, as amended; and comply with all
7 other applicable laws, rules, and regulations. Contributions
8 shall vest immediately upon deposit in the police officer's
9 account.

10 A police officer who participates in the defined
11 contribution plan under this Section may not earn creditable
12 service or otherwise participate in the defined benefit plan
13 offered by his or her employing municipality, except as an
14 annuitant in another fund or as a survivor, while he or she is
15 a participant in the defined contribution plan. The defined
16 contribution plan under this Section shall not be construed to
17 be a pension, annuity, or other defined benefit under this
18 Code.

19 (b) If a police officer who has more than 10 years of
20 creditable service in a fund enters active service with a
21 different municipality, he or she may elect to participate in
22 the defined contribution plan under this Section in lieu of the
23 defined benefit plan.

24 A police officer who has elected under this subsection to
25 participate in the defined contribution plan may, in writing,
26 rescind that election in accordance with the rules of the

1 board. Any employer contributions, and the earnings thereon,
2 shall remain vested in the police officer's account. A police
3 officer who rescinds the election may begin participating in
4 the defined benefit plan on the first day of the month
5 following the rescission.

6 (c) As used in this Section, "defined benefit plan" means
7 the retirement plan available to police officers under this
8 Article who do not participate in the defined contribution plan
9 under this Section.

10 (40 ILCS 5/3-124.1) (from Ch. 108 1/2, par. 3-124.1)

11 Sec. 3-124.1. Re-entry into active service.

12 (a) If a police officer who is receiving pension payments
13 other than as provided in Section 3-109.3 re-enters active
14 service, pension payment shall be suspended while he or she is
15 in service. When he or she again retires, pension payments
16 shall be resumed. If the police officer remains in service
17 after re-entry for a period of less than 5 years, the pension
18 shall be the same as upon first retirement. If the officer's
19 service after re-entry is at least 5 years and the officer
20 makes the required contributions during the period of re-entry,
21 his or her pension shall be recomputed by taking into account
22 the additional period of service and salary.

23 (b) If a police officer who first becomes a member on or
24 after January 1, 2019 is receiving pension payments (other than
25 as provided in Section 3-109.3) and re-enters active service

1 with any municipality that has established a pension fund under
2 this Article, that police officer may continue to receive
3 pension payments while he or she is in active service, but
4 shall only participate in a defined contribution plan
5 established by the municipality pursuant to Section 3-109.4 and
6 may not establish creditable service in the pension fund
7 established by that municipality or have his or her pension
8 recomputed.

9 (Source: P.A. 91-939, eff. 2-1-01.)

10 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

11 Sec. 7-109. Employee.

12 (1) "Employee" means any person who:

13 (a) 1. Receives earnings as payment for the performance
14 of personal services or official duties out of the general
15 fund of a municipality, or out of any special fund or funds
16 controlled by a municipality, or by an instrumentality
17 thereof, or a participating instrumentality, including, in
18 counties, the fees or earnings of any county fee office;
19 and

20 2. Under the usual common law rules applicable in
21 determining the employer-employee relationship, has the
22 status of an employee with a municipality, or any
23 instrumentality thereof, or a participating
24 instrumentality, including aldermen, county supervisors
25 and other persons (excepting those employed as independent

1 contractors) who are paid compensation, fees, allowances
2 or other emolument for official duties, and, in counties,
3 the several county fee offices.

4 (b) Serves as a township treasurer appointed under the
5 School Code, as heretofore or hereafter amended, and who
6 receives for such services regular compensation as
7 distinguished from per diem compensation, and any regular
8 employee in the office of any township treasurer whether or
9 not his earnings are paid from the income of the permanent
10 township fund or from funds subject to distribution to the
11 several school districts and parts of school districts as
12 provided in the School Code, or from both such sources; or
13 is the chief executive officer, chief educational officer,
14 chief fiscal officer, or other employee of a Financial
15 Oversight Panel established pursuant to Article 1H of the
16 School Code, other than a superintendent or certified
17 school business official, except that such person shall not
18 be treated as an employee under this Section if that person
19 has negotiated with the Financial Oversight Panel, in
20 conjunction with the school district, a contractual
21 agreement for exclusion from this Section.

22 (c) Holds an elective office in a municipality,
23 instrumentality thereof or participating instrumentality.

24 (2) "Employee" does not include persons who:

25 (a) Are eligible for inclusion under any of the
26 following laws:

1 1. "An Act in relation to an Illinois State
2 Teachers' Pension and Retirement Fund", approved May
3 27, 1915, as amended;

4 2. Articles 15 and 16 of this Code.

5 However, such persons shall be included as employees to
6 the extent of earnings that are not eligible for inclusion
7 under the foregoing laws for services not of an
8 instructional nature of any kind.

9 However, any member of the armed forces who is employed
10 as a teacher of subjects in the Reserve Officers Training
11 Corps of any school and who is not certified under the law
12 governing the certification of teachers shall be included
13 as an employee.

14 (b) Are designated by the governing body of a
15 municipality in which a pension fund is required by law to
16 be established for policemen or firemen, respectively, as
17 performing police or fire protection duties, except that
18 when such persons are the heads of the police or fire
19 department and are not eligible to be included within any
20 such pension fund, they shall be included within this
21 Article; provided, that such persons shall not be excluded
22 to the extent of concurrent service and earnings not
23 designated as being for police or fire protection duties.
24 However, (i) any head of a police department who was a
25 participant under this Article immediately before October
26 1, 1977 and did not elect, under Section 3-109 of this Act,

1 to participate in a police pension fund shall be an
2 "employee", and (ii) any chief of police who became a
3 participating employee under this Article before January
4 1, 2019 and who elects to participate in this Fund under
5 Section 3-109.1 of this Code, regardless of whether such
6 person continues to be employed as chief of police or is
7 employed in some other rank or capacity within the police
8 department, shall be an employee under this Article for so
9 long as such person is employed to perform police duties by
10 a participating municipality and has not lawfully
11 rescinded that election.

12 (c) Are contributors to or eligible to contribute to a
13 Taft-Hartley pension plan to which the participating
14 municipality is required to contribute as the person's
15 employer based on earnings from the municipality. Nothing
16 in this paragraph shall affect service credit or creditable
17 service for any period of service prior to the effective
18 date of this amendatory Act of the 98th General Assembly,
19 and this paragraph shall not apply to individuals who are
20 participating in the Fund prior to the effective date of
21 this amendatory Act of the 98th General Assembly.

22 (d) Become an employee of any of the following
23 participating instrumentalities on or after the effective
24 date of this amendatory Act of the 99th General Assembly:
25 the Illinois Municipal League; the Illinois Association of
26 Park Districts; the Illinois Supervisors, County

1 Commissioners and Superintendents of Highways Association;
2 an association, or not-for-profit corporation, membership
3 in which is authorized under Section 85-15 of the Township
4 Code; the United Counties Council; or the Will County
5 Governmental League.

6 (3) All persons, including, without limitation, public
7 defenders and probation officers, who receive earnings from
8 general or special funds of a county for performance of
9 personal services or official duties within the territorial
10 limits of the county, are employees of the county (unless
11 excluded by subsection (2) of this Section) notwithstanding
12 that they may be appointed by and are subject to the direction
13 of a person or persons other than a county board or a county
14 officer. It is hereby established that an employer-employee
15 relationship under the usual common law rules exists between
16 such employees and the county paying their salaries by reason
17 of the fact that the county boards fix their rates of
18 compensation, appropriate funds for payment of their earnings
19 and otherwise exercise control over them. This finding and this
20 amendatory Act shall apply to all such employees from the date
21 of appointment whether such date is prior to or after the
22 effective date of this amendatory Act and is intended to
23 clarify existing law pertaining to their status as
24 participating employees in the Fund.

25 (Source: P.A. 98-712, eff. 7-16-14; 99-830, eff. 1-1-17.)

1 Section 90. The State Mandates Act is amended by adding
2 Section 8.41 as follows:

3 (30 ILCS 805/8.41 new)

4 Sec. 8.41. Exempt mandate. Notwithstanding Sections 6 and 8
5 of this Act, no reimbursement by the State is required for the
6 implementation of any mandate created by this amendatory Act of
7 the 100th General Assembly.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law."