



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1280

by Rep. Darlene J. Senger

SYNOPSIS AS INTRODUCED:

40 ILCS 5/4-106	from Ch. 108 1/2, par. 4-106
40 ILCS 5/4-106.2 new	
40 ILCS 5/7-109	from Ch. 108 1/2, par. 7-109
40 ILCS 5/7-172	from Ch. 108 1/2, par. 7-172
30 ILCS 805/8.37 new	

Amends the Downstate Firefighter and Illinois Municipal Retirement Fund (IMRF) Articles of the Illinois Pension Code. Allows the chief of certain municipal fire departments to elect to participate in IMRF rather than in the municipality's firefighter pension fund. Makes related changes. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB098 06720 EFG 36767 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Sections 4-106, 7-109, and 7-172 and by adding Section 4-106.2
6 as follows:

7 (40 ILCS 5/4-106) (from Ch. 108 1/2, par. 4-106)

8 Sec. 4-106. Firefighter, firefighters. "Firefighter,
9 firefighters":

10 (a) In municipalities which have adopted Division 1 of
11 Article 10 of the Illinois Municipal Code, any person employed
12 in the municipality's fire service as a firefighter, fire
13 engineer, marine engineer, fire pilot, bomb technician or scuba
14 diver; and in any of these positions where such person's duties
15 also include those of a firefighter as classified by the Civil
16 Service Commission of that city, and whose duty is to
17 participate in the work of controlling and extinguishing fires
18 at the location of any such fires.

19 (b) In municipalities which are subject to Division 2.1 of
20 Article 10 of the Illinois Municipal Code, any person employed
21 by a city in its fire service as a firefighter, fire engineer,
22 marine engineer, fire pilot, bomb technician, or scuba diver;
23 and, in any of these positions whose duties also include those

1 of a firefighter and are certified in the same manner as a
2 firefighter in that city.

3 (c) In municipalities which are subject to neither Division
4 1 nor Division 2.1 of Article 10 of the Illinois Municipal
5 Code, any person who would have been included as a firefighter
6 under sub-paragraph (a) or (b) above except that he served as a
7 de facto and not as a de jure firefighter.

8 (d) Notwithstanding the other provisions of this Section,
9 "firefighter" does not include any person who is actively
10 participating in the State Universities Retirement System
11 under subsection (h) of Section 15-107 with respect to the
12 employment for which he or she is a participating employee in
13 that System.

14 Notwithstanding the other provisions of this Section,
15 "firefighter" does not include any person who has elected under
16 Section 4-106.2 to participate in the Illinois Municipal
17 Retirement Fund rather than in a fund established under this
18 Article, with respect to the employment for which he or she is
19 a participating employee in the Illinois Municipal Retirement
20 Fund.

21 (e) This amendatory Act of 1977 does not affect persons
22 covered by this Article prior to September 22, 1977.

23 (Source: P.A. 90-576, eff. 3-31-98.)

24 (40 ILCS 5/4-106.2 new)

25 Sec. 4-106.2. Participation by chief. Any person who is

1 employed as chief of the fire department of a "participating
2 municipality" as defined in Section 7-106 of this Code may
3 elect to participate in the Illinois Municipal Retirement Fund
4 rather than in a fund created under this Article. The election
5 shall be filed in writing with the Board of the Illinois
6 Municipal Retirement Fund.

7 An election under this Section is irrevocable with respect
8 to the person's employment within that fire department, without
9 regard to whether the person continues to be employed as chief
10 of the fire department or is employed in some other rank or
11 capacity within the fire department.

12 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

13 Sec. 7-109. Employee.

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

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

22 2. Under the usual common law rules applicable in
23 determining the employer-employee relationship, has
24 the status of an employee with a municipality, or any
25 instrumentality thereof, or a participating

1 instrumentality, including aldermen, county
2 supervisors and other persons (excepting those
3 employed as independent contractors) who are paid
4 compensation, fees, allowances or other emolument for
5 official duties, and, in counties, the several county
6 fee offices.

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

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

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

2 (a) Are eligible for inclusion under any of the
3 following laws:

4 1. "An Act in relation to an Illinois State
5 Teachers' Pension and Retirement Fund", approved May
6 27, 1915, as amended;

7 2. Articles 15 and 16 of this Code.

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

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

17 (b) Are designated by the governing body of a
18 municipality in which a pension fund is required by law to
19 be established for policemen or firemen, respectively, as
20 performing police or fire protection duties, except that
21 when such persons are the heads of the police or fire
22 department and are not eligible to be included within any
23 such pension fund, they shall be included within this
24 Article; provided, that such persons shall not be excluded
25 to the extent of concurrent service and earnings not
26 designated as being for police or fire protection duties.

1 However, (i) any head of a police department who was a
2 participant under this Article immediately before October
3 1, 1977 and did not elect, under Section 3-109 of this Act,
4 to participate in a police pension fund shall be an
5 "employee", ~~and~~ (ii) any chief of police who elects to
6 participate in this Fund under Section 3-109.1 of this
7 Code, regardless of whether such person continues to be
8 employed as chief of police or is employed in some other
9 rank or capacity within the police department, shall be an
10 employee under this Article for so long as such person is
11 employed to perform police duties by a participating
12 municipality and has not lawfully rescinded that election,
13 and (iii) any chief of a fire department who elects to
14 participate in this Fund under Section 4-106.2 of this
15 Code, regardless of whether the person continues to be
16 employed as chief of the fire department or is employed in
17 some other rank or capacity within the fire department,
18 shall be an employee under this Article for so long as the
19 person is employed within the fire department by the
20 participating municipality.

21 (c) After August 26, 2011 (the effective date of Public
22 Act 97-609), are contributors to or eligible to contribute
23 to a Taft-Hartley pension plan established on or before
24 June 1, 2011 and are employees of a theatre, arena, or
25 convention center that is located in a municipality located
26 in a county with a population greater than 5,000,000, and

1 to which the participating municipality is required to
2 contribute as the person's employer based on earnings from
3 the municipality. Nothing in this paragraph shall affect
4 service credit or creditable service for any period of
5 service prior to August 26, 2011, and this paragraph shall
6 not apply to individuals who are participating in the Fund
7 prior to August 26, 2011.

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

1 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
2 97-813, eff. 7-13-12.)

3 (40 ILCS 5/7-172) (from Ch. 108 1/2, par. 7-172)

4 Sec. 7-172. Contributions by participating municipalities
5 and participating instrumentalities.

6 (a) Each participating municipality and each participating
7 instrumentality shall make payment to the fund as follows:

8 1. municipality contributions in an amount determined
9 by applying the municipality contribution rate to each
10 payment of earnings paid to each of its participating
11 employees;

12 2. an amount equal to the employee contributions
13 provided by paragraph (a) of Section 7-173, whether or not
14 the employee contributions are withheld as permitted by
15 that Section;

16 3. all accounts receivable, together with interest
17 charged thereon, as provided in Section 7-209;

18 4. if it has no participating employees with current
19 earnings, an amount payable which, over a closed period of
20 20 years for participating municipalities and 10 years for
21 participating instrumentalities, will amortize, at the
22 effective rate for that year, any unfunded obligation. The
23 unfunded obligation shall be computed as provided in
24 paragraph 2 of subsection (b);

25 5. if it has fewer than 7 participating employees or a

1 negative balance in its municipality reserve, the greater
2 of (A) an amount payable that, over a period of 20 years,
3 will amortize at the effective rate for that year any
4 unfunded obligation, computed as provided in paragraph 2 of
5 subsection (b) or (B) the amount required by paragraph 1 of
6 this subsection (a).

7 (b) A separate municipality contribution rate shall be
8 determined for each calendar year for all participating
9 municipalities together with all instrumentalities thereof.
10 The municipality contribution rate shall be determined for
11 participating instrumentalities as if they were participating
12 municipalities. The municipality contribution rate shall be
13 the sum of the following percentages:

14 1. The percentage of earnings of all the participating
15 employees of all participating municipalities and
16 participating instrumentalities which, if paid over the
17 entire period of their service, will be sufficient when
18 combined with all employee contributions available for the
19 payment of benefits, to provide all annuities for
20 participating employees, and the \$3,000 death benefit
21 payable under Sections 7-158 and 7-164, such percentage to
22 be known as the normal cost rate.

23 2. The percentage of earnings of the participating
24 employees of each participating municipality and
25 participating instrumentalities necessary to adjust for
26 the difference between the present value of all benefits,

1 excluding temporary and total and permanent disability and
2 death benefits, to be provided for its participating
3 employees and the sum of its accumulated municipality
4 contributions and the accumulated employee contributions
5 and the present value of expected future employee and
6 municipality contributions pursuant to subparagraph 1 of
7 this paragraph (b). This adjustment shall be spread over
8 the remainder of the period that is allowable under
9 generally accepted accounting principles.

10 3. The percentage of earnings of the participating
11 employees of all municipalities and participating
12 instrumentalities necessary to provide the present value
13 of all temporary and total and permanent disability
14 benefits granted during the most recent year for which
15 information is available.

16 4. The percentage of earnings of the participating
17 employees of all participating municipalities and
18 participating instrumentalities necessary to provide the
19 present value of the net single sum death benefits expected
20 to become payable from the reserve established under
21 Section 7-206 during the year for which this rate is fixed.

22 5. The percentage of earnings necessary to meet any
23 deficiency arising in the Terminated Municipality Reserve.

24 (c) A separate municipality contribution rate shall be
25 computed for each participating municipality or participating
26 instrumentality for its sheriff's law enforcement employees.

1 A separate municipality contribution rate shall be
2 computed for the sheriff's law enforcement employees of each
3 forest preserve district that elects to have such employees.
4 For the period from January 1, 1986 to December 31, 1986, such
5 rate shall be the forest preserve district's regular rate plus
6 2%.

7 In the event that the Board determines that there is an
8 actuarial deficiency in the account of any municipality with
9 respect to a person who has elected to participate in the Fund
10 under Section 3-109.1 of this Code, the Board may adjust the
11 municipality's contribution rate so as to make up that
12 deficiency over such reasonable period of time as the Board may
13 determine.

14 (c-5) In the event that the Board determines that there is
15 an actuarial deficiency in the account of any municipality with
16 respect to a person who has elected to participate in the Fund
17 under Section 4-106.2 of this Code, the Board may adjust the
18 municipality's contribution rate so as to make up that
19 deficiency over such reasonable period of time as the Board may
20 determine.

21 (d) The Board may establish a separate municipality
22 contribution rate for all employees who are program
23 participants employed under the federal Comprehensive
24 Employment Training Act by all of the participating
25 municipalities and instrumentalities. The Board may also
26 provide that, in lieu of a separate municipality rate for these

1 employees, a portion of the municipality contributions for such
2 program participants shall be refunded or an extra charge
3 assessed so that the amount of municipality contributions
4 retained or received by the fund for all CETA program
5 participants shall be an amount equal to that which would be
6 provided by the separate municipality contribution rate for all
7 such program participants. Refunds shall be made to prime
8 sponsors of programs upon submission of a claim therefor and
9 extra charges shall be assessed to participating
10 municipalities and instrumentalities. In establishing the
11 municipality contribution rate as provided in paragraph (b) of
12 this Section, the use of a separate municipality contribution
13 rate for program participants or the refund of a portion of the
14 municipality contributions, as the case may be, may be
15 considered.

16 (e) Computations of municipality contribution rates for
17 the following calendar year shall be made prior to the
18 beginning of each year, from the information available at the
19 time the computations are made, and on the assumption that the
20 employees in each participating municipality or participating
21 instrumentality at such time will continue in service until the
22 end of such calendar year at their respective rates of earnings
23 at such time.

24 (f) Any municipality which is the recipient of State
25 allocations representing that municipality's contributions for
26 retirement annuity purposes on behalf of its employees as

1 provided in Section 12-21.16 of the Illinois Public Aid Code
2 shall pay the allocations so received to the Board for such
3 purpose. Estimates of State allocations to be received during
4 any taxable year shall be considered in the determination of
5 the municipality's tax rate for that year under Section 7-171.
6 If a special tax is levied under Section 7-171, none of the
7 proceeds may be used to reimburse the municipality for the
8 amount of State allocations received and paid to the Board. Any
9 multiple-county or consolidated health department which
10 receives contributions from a county under Section 11.2 of "An
11 Act in relation to establishment and maintenance of county and
12 multiple-county health departments", approved July 9, 1943, as
13 amended, or distributions under Section 3 of the Department of
14 Public Health Act, shall use these only for municipality
15 contributions by the health department.

16 (g) Municipality contributions for the several purposes
17 specified shall, for township treasurers and employees in the
18 offices of the township treasurers who meet the qualifying
19 conditions for coverage hereunder, be allocated among the
20 several school districts and parts of school districts serviced
21 by such treasurers and employees in the proportion which the
22 amount of school funds of each district or part of a district
23 handled by the treasurer bears to the total amount of all
24 school funds handled by the treasurer.

25 From the funds subject to allocation among districts and
26 parts of districts pursuant to the School Code, the trustees

1 shall withhold the proportionate share of the liability for
2 municipality contributions imposed upon such districts by this
3 Section, in respect to such township treasurers and employees
4 and remit the same to the Board.

5 The municipality contribution rate for an educational
6 service center shall initially be the same rate for each year
7 as the regional office of education or school district which
8 serves as its administrative agent. When actuarial data become
9 available, a separate rate shall be established as provided in
10 subparagraph (i) of this Section.

11 The municipality contribution rate for a public agency,
12 other than a vocational education cooperative, formed under the
13 Intergovernmental Cooperation Act shall initially be the
14 average rate for the municipalities which are parties to the
15 intergovernmental agreement. When actuarial data become
16 available, a separate rate shall be established as provided in
17 subparagraph (i) of this Section.

18 (h) Each participating municipality and participating
19 instrumentality shall make the contributions in the amounts
20 provided in this Section in the manner prescribed from time to
21 time by the Board and all such contributions shall be
22 obligations of the respective participating municipalities and
23 participating instrumentalities to this fund. The failure to
24 deduct any employee contributions shall not relieve the
25 participating municipality or participating instrumentality of
26 its obligation to this fund. Delinquent payments of

1 contributions due under this Section may, with interest, be
2 recovered by civil action against the participating
3 municipalities or participating instrumentalities.
4 Municipality contributions, other than the amount necessary
5 for employee contributions, for periods of service by employees
6 from whose earnings no deductions were made for employee
7 contributions to the fund, may be charged to the municipality
8 reserve for the municipality or participating instrumentality.

9 (i) Contributions by participating instrumentalities shall
10 be determined as provided herein except that the percentage
11 derived under subparagraph 2 of paragraph (b) of this Section,
12 and the amount payable under subparagraph 4 of paragraph (a) of
13 this Section, shall be based on an amortization period of 10
14 years.

15 (j) Notwithstanding the other provisions of this Section,
16 the additional unfunded liability accruing as a result of this
17 amendatory Act of the 94th General Assembly shall be amortized
18 over a period of 30 years beginning on January 1 of the second
19 calendar year following the calendar year in which this
20 amendatory Act takes effect, except that the employer may
21 provide for a longer amortization period by adopting a
22 resolution or ordinance specifying a 35-year or 40-year period
23 and submitting a certified copy of the ordinance or resolution
24 to the fund no later than June 1 of the calendar year following
25 the calendar year in which this amendatory Act takes effect.

26 (k) If the amount of a participating employee's reported

1 earnings for any of the 12-month periods used to determine the
2 final rate of earnings exceeds the employee's 12 month reported
3 earnings with the same employer for the previous year by the
4 greater of 6% or 1.5 times the annual increase in the Consumer
5 Price Index-U, as established by the United States Department
6 of Labor for the preceding September, the participating
7 municipality or participating instrumentality that paid those
8 earnings shall pay to the Fund, in addition to any other
9 contributions required under this Article, the present value of
10 the increase in the pension resulting from the portion of the
11 increase in salary that is in excess of the greater of 6% or
12 1.5 times the annual increase in the Consumer Price Index-U, as
13 determined by the Fund. This present value shall be computed on
14 the basis of the actuarial assumptions and tables used in the
15 most recent actuarial valuation of the Fund that is available
16 at the time of the computation.

17 Whenever it determines that a payment is or may be required
18 under this subsection (k), the fund shall calculate the amount
19 of the payment and bill the participating municipality or
20 participating instrumentality for that amount. The bill shall
21 specify the calculations used to determine the amount due. If
22 the participating municipality or participating
23 instrumentality disputes the amount of the bill, it may, within
24 30 days after receipt of the bill, apply to the fund in writing
25 for a recalculation. The application must specify in detail the
26 grounds of the dispute. Upon receiving a timely application for

1 recalculation, the fund shall review the application and, if
2 appropriate, recalculate the amount due. The participating
3 municipality and participating instrumentality contributions
4 required under this subsection (k) may be paid in the form of a
5 lump sum within 90 days after receipt of the bill. If the
6 participating municipality and participating instrumentality
7 contributions are not paid within 90 days after receipt of the
8 bill, then interest will be charged at a rate equal to the
9 fund's annual actuarially assumed rate of return on investment
10 compounded annually from the 91st day after receipt of the
11 bill. Payments must be concluded within 3 years after receipt
12 of the bill by the participating municipality or participating
13 instrumentality.

14 When assessing payment for any amount due under this
15 subsection (k), the fund shall exclude earnings increases
16 resulting from overload or overtime earnings.

17 When assessing payment for any amount due under this
18 subsection (k), the fund shall also exclude earnings increases
19 attributable to standard employment promotions resulting in
20 increased responsibility and workload.

21 This subsection (k) does not apply to earnings increases
22 paid to individuals under contracts or collective bargaining
23 agreements entered into, amended, or renewed before January 1,
24 2012 (the effective date of Public Act 97-609), earnings
25 increases paid to members who are 10 years or more from
26 retirement eligibility, or earnings increases resulting from

1 an increase in the number of hours required to be worked.

2 When assessing payment for any amount due under this
3 subsection (k), the fund shall also exclude earnings
4 attributable to personnel policies adopted before January 1,
5 2012 (the effective date of Public Act 97-609) as long as those
6 policies are not applicable to employees who begin service on
7 or after January 1, 2012 (the effective date of Public Act
8 97-609).

9 (Source: P.A. 96-1084, eff. 7-16-10; 96-1140, eff. 7-21-10;
10 97-333, eff. 8-12-11; 97-609, eff. 1-1-12; 97-933, eff.
11 8-10-12.)

12 Section 90. The State Mandates Act is amended by adding
13 Section 8.37 as follows:

14 (30 ILCS 805/8.37 new)

15 Sec. 8.37. Exempt mandate. Notwithstanding Sections 6 and 8
16 of this Act, no reimbursement by the State is required for the
17 implementation of any mandate created by this amendatory Act of
18 the 98th General Assembly.

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.