



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2954

by Rep. John Cavaletto

SYNOPSIS AS INTRODUCED:

40 ILCS 5/4-102	from Ch. 108 1/2, par. 4-102
40 ILCS 5/4-106	from Ch. 108 1/2, par. 4-106
40 ILCS 5/4-106.5 new	
40 ILCS 5/4-107	from Ch. 108 1/2, par. 4-107
40 ILCS 5/4-108.3	from Ch. 108 1/2, par. 4-108.3
40 ILCS 5/4-142	from Ch. 108 1/2, par. 4-142
40 ILCS 5/7-109	from Ch. 108 1/2, par. 7-109

Amends the Illinois Pension Code. Requires a person who becomes employed as a downstate fire chief on or after July 1, 2018 by a municipality that participates in the Illinois Municipal Retirement Fund (IMRF) to participate in IMRF rather than the relevant downstate firefighter pension fund. Until July 1, 2018, allows downstate fire chiefs to terminate their participation in a downstate firefighter pension fund and allows them to transfer their participation and pension credits from the downstate firefighter pension fund to IMRF. Provides that a municipality may provide an alternative retirement plan for a fire chief who terminates participation in its downstate firefighter pension fund and does not participate in IMRF. Also makes technical corrections. Effective immediately.

LRB100 10621 EFG 20843 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

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 4-102, 4-106, 4-107, 4-108.3, 4-142, and 7-109 and by
6 adding Section 4-106.5 as follows:

7 (40 ILCS 5/4-102) (from Ch. 108 1/2, par. 4-102)

8 Sec. 4-102. Terms defined. The terms used in this Article
9 have the meanings ascribed to them in the Sections following
10 this Section and preceding Section 4-106.1 ~~4-103 through 4-106,~~
11 except when the context otherwise requires.

12 (Source: P.A. 83-1440.)

13 (40 ILCS 5/4-106) (from Ch. 108 1/2, par. 4-106)

14 Sec. 4-106. Firefighter, firefighters. "Firefighter,
15 firefighters":

16 (a) In municipalities which have adopted Division 1 of
17 Article 10 of the Illinois Municipal Code, any person employed
18 in the municipality's fire service as a firefighter, fire
19 engineer, marine engineer, fire pilot, bomb technician or scuba
20 diver; and in any of these positions where such person's duties
21 also include those of a firefighter as classified by the Civil
22 Service Commission of that city, and whose duty is to

1 participate in the work of controlling and extinguishing fires
2 at the location of any such fires.

3 (b) In municipalities which are subject to Division 2.1 of
4 Article 10 of the Illinois Municipal Code, any person employed
5 by a city in its fire service as a firefighter, fire engineer,
6 marine engineer, fire pilot, bomb technician, or scuba diver;
7 and, in any of these positions whose duties also include those
8 of a firefighter and are certified in the same manner as a
9 firefighter in that city.

10 (c) In municipalities which are subject to neither Division
11 1 nor Division 2.1 of Article 10 of the Illinois Municipal
12 Code, any person who would have been included as a firefighter
13 under sub-paragraph (a) or (b) above except that he served as a
14 de facto and not as a de jure firefighter.

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

21 (d-5) Notwithstanding the other provisions of this
22 Section, "firefighter" does not include a person who is
23 employed as the chief of a fire department with respect to that
24 employment as chief, if that person, in accordance with Section
25 4-106.5: (i) is ineligible to participate in the pension fund
26 established under this Article for that fire department with

1 respect to that employment as chief; (ii) has elected to
2 terminate participation in the pension fund established under
3 this Article for that fire department, with respect to that
4 employment as chief; or (iii) is actively participating in the
5 Illinois Municipal Retirement Fund with respect to that
6 employment as chief.

7 (e) Public Act 80-1024 ~~This amendatory Act of 1977~~ does not
8 affect persons covered by this Article prior to September 22,
9 1977.

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

11 (40 ILCS 5/4-106.5 new)

12 Sec. 4-106.5. Participation by fire chief; IMRF;
13 termination; alternative retirement plan.

14 (a) A person who, on or after July 1, 2018, becomes
15 employed as the chief of the fire department of a
16 "participating municipality", as defined in Section 7-106 of
17 this Code, shall participate in the Illinois Municipal
18 Retirement Fund (IMRF) with respect to that employment as
19 chief, rather than in a fund created under this Article 4.

20 (b) Until July 1, 2018, a person who is employed as the
21 chief of the fire department of a municipality subject to this
22 Article and participates with respect to that employment in the
23 pension fund established under this Article for that fire
24 department may elect to terminate participation in that pension
25 fund. The election to terminate participation must be filed in

1 writing with the board of the pension fund and is irrevocable.

2 (c) Until July 1, 2018, a person making the election
3 provided in subsection (b) may, at the same time, also elect to
4 begin participating in IMRF with respect to that employment as
5 chief, beginning on the effective date of the election; but
6 only if the employing municipality is a "participating
7 municipality", as defined in Section 7-106 of this Code. The
8 election must be filed in writing with both the board of the
9 IMRF and the board of the Article 4 fund. Upon beginning
10 participation in IMRF as a fire chief, the election to do so
11 becomes irrevocable.

12 (d) When a person who is employed by a municipality as the
13 chief of a fire department has, in accordance with subsection
14 (b), terminated participation in the pension fund established
15 under this Article for that municipality but has not elected,
16 in accordance with subsection (c), to participate in IMRF
17 instead, the municipality may provide an alternative
18 retirement plan for that fire chief for that service as chief.

19 (40 ILCS 5/4-107) (from Ch. 108 1/2, par. 4-107)

20 Sec. 4-107. Qualifications.

21 (a) A firefighter who has not contributed to the fund
22 during the entire period of service, to be entitled to the
23 benefits of this Article, must contribute to the fund the
24 amount he or she would have paid had deductions been made from
25 his or her salary during the entire period of his or her

1 creditable service.

2 (b) Any person appointed as a firefighter in a municipality
3 shall, within 3 months after receiving his or her first
4 appointment and within 3 months after any reappointment make
5 written application to the board to come under the provisions
6 of this Article.

7 (c) A person otherwise qualified to participate who was
8 excluded from participation by reason of the age or fitness
9 requirements removed by this amendatory Act of 1995 may elect
10 to participate by making a written application to the Board
11 before July 1, 1996. Persons so electing shall begin
12 participation on the first day of the month following the month
13 in which the application is received by the Board. These
14 persons may also elect to establish creditable service for
15 periods of employment as a firefighter during which they did
16 not participate by paying into the pension fund, before January
17 1, 1997, the amount that the person would have contributed had
18 deductions from salary been made for this purpose at the time
19 the service was rendered, together with interest thereon at 6%
20 per annum, compounded annually, from the time the service was
21 rendered until the date of payment.

22 (d) A person described in subsection (h) of Section 15-107
23 shall not participate in any pension fund established under
24 this Article with respect to employment for which he or she is
25 a participating employee in the State Universities Retirement
26 System.

1 (e) Notwithstanding the other provisions of this Section, a
2 person who is or was employed as the chief of a fire department
3 shall not participate in any pension fund established under
4 this Article with respect to any period of that employment as
5 chief that: (i) begins on or after July 1, 2018; (ii) follows
6 the effective date of his or her election under Section 4-106.5
7 to terminate participation in the pension fund established
8 under this Article for that fire department, with respect to
9 that employment as chief; or (iii) during which he or she
10 actively participates in the Illinois Municipal Retirement
11 Fund with respect to that employment as chief.

12 (Source: P.A. 89-52, eff. 6-30-95; 90-576, eff. 3-31-98.)

13 (40 ILCS 5/4-108.3) (from Ch. 108 1/2, par. 4-108.3)

14 Sec. 4-108.3. Transfer of credits to IMRF; county sheriff;
15 fire chief.

16 (a) Until July 1, 1989, any active member of the Illinois
17 Municipal Retirement Fund who is a county sheriff may apply for
18 transfer of up to 80 months of creditable service accumulated
19 in any pension fund established under this Article to the
20 Illinois Municipal Retirement Fund. Such creditable service
21 shall be transferred only upon payment by such pension fund to
22 the Illinois Municipal Retirement Fund of an amount equal to:

23 (1) the amounts accumulated to the credit of the applicant
24 on the books of the fund on the date of transfer; and

25 (2) employer contributions in an amount equal to the amount

1 determined under subparagraph (1); and

2 (3) any interest paid by the applicant in order to
3 reinstate service.

4 Participation in such pension fund as to any credits
5 transferred under this Section shall terminate on the date of
6 transfer.

7 (b) Until July 1, 1989, any such sheriff may reinstate
8 creditable service terminated upon receipt of a refund, by
9 payment to the firefighters' pension fund of the amount of the
10 refund, with interest thereon at the rate of 6% per year,
11 compounded annually from the date of refund to the date of
12 payment.

13 (c) Until July 1, 2018, any active member of the Illinois
14 Municipal Retirement Fund who participates in that Fund for
15 service as the fire chief of a municipality may apply for
16 transfer of his or her creditable service accumulated in a
17 pension fund established under this Article for service in that
18 position and municipality to the Illinois Municipal Retirement
19 Fund. Such creditable service shall be transferred only upon
20 payment by the Article 4 pension fund to the Illinois Municipal
21 Retirement Fund of an amount equal to:

22 (1) the amounts accumulated to the credit of the
23 applicant for that service on the books of the fund on the
24 date of transfer; and

25 (2) employer contributions in an amount equal to the
26 amount determined under item (1); and

1 (3) any interest paid by the applicant in order to
2 reinstate that service.

3 Participation in the pension fund as to any credits
4 transferred under this Section shall terminate on the date of
5 transfer.

6 (d) Until July 1, 2018, any fire chief transferring credits
7 under subsection (c) may reinstate credits for service in that
8 position that were terminated upon receipt of a refund, by
9 payment to the firefighters' pension fund of the amount of the
10 refund, with interest thereon at the rate of 6% per year,
11 compounded annually from the date of refund to the date of
12 payment.

13 (Source: P.A. 85-941.)

14 (40 ILCS 5/4-142) (from Ch. 108 1/2, par. 4-142)

15 Sec. 4-142. Applicability of home rule powers. A home rule
16 unit, as defined in Article VII of the 1970 Illinois
17 Constitution or any amendment thereto, shall have no power to
18 change, alter, or amend in any way the provisions of this
19 Article. A home rule unit which is a municipality, as defined
20 in Section 4-103, shall not provide for, singly or as a part of
21 any plan or program, by any means whatsoever, any type of
22 retirement or annuity benefit to a firefighter other than
23 through establishment of a fund as provided in this Article as
24 now or hereafter amended. This Section does not prohibit a
25 municipality from providing an alternative retirement plan for

1 its fire chief for his or her service as chief in accordance
2 with subsection (d) of Section 4-106.5.

3 (Source: P.A. 83-1440.)

4 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

5 Sec. 7-109. Employee.

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

7 (a) 1. Receives earnings as payment for the performance
8 of personal services or official duties out of the general
9 fund of a municipality, or out of any special fund or funds
10 controlled by a municipality, or by an instrumentality
11 thereof, or a participating instrumentality, including, in
12 counties, the fees or earnings of any county fee office;
13 and

14 2. Under the usual common law rules applicable in
15 determining the employer-employee relationship, has the
16 status of an employee with a municipality, or any
17 instrumentality thereof, or a participating
18 instrumentality, including aldermen, county supervisors
19 and other persons (excepting those employed as independent
20 contractors) who are paid compensation, fees, allowances
21 or other emolument for official duties, and, in counties,
22 the several county fee offices.

23 (b) Serves as a township treasurer appointed under the
24 School Code, as heretofore or hereafter amended, and who
25 receives for such services regular compensation as

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

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

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

19 (a) Are eligible for inclusion under any of the
20 following laws:

21 1. "An Act in relation to an Illinois State
22 Teachers' Pension and Retirement Fund", approved May
23 27, 1915, as amended;

24 2. Articles 15 and 16 of this Code.

25 However, such persons shall be included as employees to
26 the extent of earnings that are not eligible for inclusion

1 under the foregoing laws for services not of an
2 instructional nature of any kind.

3 However, any member of the armed forces who is employed
4 as a teacher of subjects in the Reserve Officers Training
5 Corps of any school and who is not certified under the law
6 governing the certification of teachers shall be included
7 as an employee.

8 (b) Are designated by the governing body of a
9 municipality in which a pension fund is required by law to
10 be established for policemen or firemen, respectively, as
11 performing police or fire protection duties, except that
12 when such persons are the heads of the police or fire
13 department and are not eligible to be included within any
14 such pension fund, they shall be included within this
15 Article; provided, that such persons shall not be excluded
16 to the extent of concurrent service and earnings not
17 designated as being for police or fire protection duties.
18 However, (i) any head of a police department who was a
19 participant under this Article immediately before October
20 1, 1977 and did not elect, under Section 3-109 of this Act,
21 to participate in a police pension fund shall be an
22 "employee"; ~~and~~ (ii) any chief of police who elects to
23 participate in this Fund under Section 3-109.1 of this
24 Code, regardless of whether such person continues to be
25 employed as chief of police or is employed in some other
26 rank or capacity within the police department, shall be an

1 employee under this Article for so long as such person is
2 employed to perform police duties by a participating
3 municipality and has not lawfully rescinded that election;
4 and (iii) any person employed as the fire chief of a
5 participating municipality who is subject to subsection
6 (a) of Section 4-106.5 or who elects under subsection (c)
7 of that Section to participate in this Fund rather than the
8 pension fund established for that municipality under
9 Article 4 of this Code shall be an employee under this
10 Article with respect to that employment as chief.

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

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

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

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

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

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.