



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3391

Introduced 2/14/2020, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

See Index

Amends the Regulation of Public Pension Funds and the Downstate Firefighter Articles of the Illinois Pension Code. Provides that the Public Pension Division of the Department of Insurance or the Consolidated Fund may examine or investigate any downstate police or downstate firefighter pension fund as often as the Division or the Consolidated Fund deems appropriate but shall, at a minimum, conduct an examination of every downstate police and downstate firefighter pension fund not less frequently than once every 7 years (instead of once every 3 years). Provides that a pension fund shall request a hearing within 30 days after the receipt of the final report of examination and shall submit payment for the hearing cost, which shall not exceed \$600. Establishes a penalty for a pension fund that fails, without just cause, to submit requested examination documentation. In a provision establishing penalties for pension funds that fail to file certain statements, specifies that a pension fund shall comply with the notice of noncompliance within 15 days. Provides that the Director of Insurance may assess a civil penalty of up to \$4,000 (instead of \$2,000) for each noncompliance with an order of the Director. In a provision of the Downstate Firefighter Article concerning the calculation of retirement pensions and automatic annual increases for eligible firefighters who participated in more than one pension fund, removes language limiting application of the provision to Tier 1 retirement pension amounts and Tier 1 automatic annual increases. Makes other changes. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB101 20442 RPS 70000 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

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 1A-104, 1A-113, and 4-109.3 as follows:

6 (40 ILCS 5/1A-104)

7 Sec. 1A-104. Examinations and investigations.

8 (a) Except as described in the following paragraph with
9 respect to pension funds established under Article 3 or 4 of
10 this Code, the Division shall make periodic examinations and
11 investigations of all pension funds established under this Code
12 and maintained for the benefit of employees and officers of
13 governmental units in the State of Illinois. However, in lieu
14 of making an examination and investigation, the Division may
15 accept and rely upon a report of audit or examination of any
16 pension fund made by an independent certified public accountant
17 pursuant to the provisions of the Article of this Code
18 governing the pension fund. The acceptance of the report of
19 audit or examination does not bar the Division from making a
20 further audit, examination, and investigation if deemed
21 necessary by the Division.

22 For pension funds established under Article 3 or 4 of this
23 Code: (i) prior to the conclusion of the transition period, the

1 Division shall make the periodic examinations and
2 investigations described in the preceding paragraph; and (ii)
3 after the conclusion of the transition period, the Division may
4 accept and rely upon a report of audit or examination of such
5 pension fund made by an independent certified public accountant
6 retained by the Consolidated Fund. The acceptance of the report
7 of audit or examination does not bar the Division from making a
8 further audit, examination, and investigation if deemed
9 necessary by the Division.

10 The Department may implement a flexible system of
11 examinations under which it directs resources as it deems
12 necessary or appropriate. In consultation with the pension fund
13 being examined, the Division may retain attorneys, independent
14 actuaries, independent certified public accountants, and other
15 professionals and specialists as examiners, the cost of which
16 (except in the case of pension funds established under Article
17 3 or 4) shall be borne by the pension fund that is the subject
18 of the examination.

19 (b) The Division or the Consolidated Fund, as appropriate,
20 may shall examine or investigate any each pension fund
21 established under Article 3 or Article 4 of this Code as often
22 as the Division or the Consolidated Fund deems appropriate but
23 shall, at a minimum, conduct an examination of every pension
24 fund established under Article 3 or Article 4 of this Code not
25 less frequently than once every 7 years. In determining the
26 nature, scope, and frequency of the examinations, the Division

1 or the Consolidated Fund, whichever is applicable, shall use a
2 risk-focused approach that may consider, but is not limited to,
3 the following: ~~The schedule of each examination shall be such~~
4 ~~that each fund shall be examined once every 3 years.~~

5 ~~Each examination shall include the following:~~

6 (1) an audit of financial transactions, investment
7 policies, and procedures;

8 (2) an examination of books, records, documents,
9 files, and other pertinent memoranda relating to
10 financial, statistical, and administrative operations;

11 (3) a review of policies and procedures maintained for
12 the administration and operation of the pension fund;

13 (4) a determination of whether or not full effect is
14 being given to the statutory provisions governing the
15 operation of the pension fund;

16 (5) a determination of whether or not the
17 administrative policies in force are in accord with the
18 purposes of the statutory provisions and effectively
19 protect and preserve the rights and equities of the
20 participants;

21 (6) a determination of whether or not proper financial
22 and statistical records have been established and adequate
23 documentary evidence is recorded and maintained in support
24 of the several types of annuity and benefit payments being
25 made; and

26 (7) a determination of whether or not the calculations

1 made by the fund for the payment of all annuities and
2 benefits are accurate.

3 In addition, the Division or the Consolidated Fund, as
4 appropriate, may conduct investigations, which shall be
5 identified as such and which may include one or more of the
6 items listed in this subsection.

7 Pension funds selected for examination shall have the
8 period of time prescribed by rule after the date of receipt of
9 the warrant of examiners to submit all requested documentation,
10 subject to a penalty of \$100 for each day of noncompliance.

11 A copy of the report of examination or investigation as
12 prepared by the Division or the Consolidated Fund, as
13 appropriate, shall be submitted to the secretary of the board
14 of trustees of the pension fund examined or investigated and to
15 the chief executive officer of the municipality. The Director,
16 upon request, shall grant a hearing to the officers or trustees
17 of the pension fund and to the officers or trustees of the
18 Consolidated Fund, as appropriate, or their duly appointed
19 representatives, upon any facts contained in the report of
20 examination. The pension fund shall request such a hearing
21 within 30 days after the receipt of the final report of
22 examination and shall submit payment for the hearing cost,
23 which shall not exceed \$600. The hearing shall be conducted
24 before filing the report or making public any information
25 contained in the report. The Director may withhold the report
26 from public inspection for up to 60 days following the hearing.

1 Pursuant to this Section, the Division and the Board of the
2 Consolidated Fund shall adopt rules that ensure consistency and
3 due process in the examination process as necessary to
4 accomplish the purposes of this Article.

5 (Source: P.A. 101-610, eff. 1-1-20.)

6 (40 ILCS 5/1A-113)

7 Sec. 1A-113. Penalties.

8 (a) A pension fund that fails, without just cause, to file
9 its annual statement within the time prescribed under Section
10 1A-109 shall pay to the Department a penalty to be determined
11 by the Department, which shall not exceed \$100 for each day's
12 delay, and the pension fund shall comply within 15 days after
13 the receipt of the notice of noncompliance.

14 (a-5) A pension fund that fails, without just cause, to
15 submit the requested examination documentation within the time
16 prescribed in the written notice requesting the examination
17 documentation shall pay to the Department a penalty to be
18 determined by the Department, which shall not exceed \$100 for
19 each day's delay, and the pension fund shall comply within 15
20 days after the receipt of the notice of noncompliance.

21 (b) A pension fund that fails, without just cause, to file
22 its actuarial statement within the time prescribed under
23 Section 1A-110 or 1A-111 shall pay to the Department a penalty
24 to be determined by the Department, which shall not exceed \$100
25 for each day's delay, and the pension fund shall comply within

1 15 days after the receipt of the notice of noncompliance.

2 (c) A pension fund that fails to pay a fee within the time
3 prescribed under Section 1A-112 shall pay to the Department a
4 penalty of 5% of the amount of the fee for each month or part of
5 a month that the fee is late. The entire penalty shall not
6 exceed 25% of the fee due, and the pension fund shall comply
7 within 15 days after receipt of the notice of noncompliance.

8 (d) This subsection applies to any governmental unit, as
9 defined in Section 1A-102, that is subject to any law
10 establishing a pension fund or retirement system for the
11 benefit of employees of the governmental unit.

12 Whenever the Division determines by examination,
13 investigation, or in any other manner that the governing body
14 or any elected or appointed officer or official of a
15 governmental unit has failed to comply with any provision of
16 that law:

17 (1) The Director shall notify in writing the governing
18 body, officer, or official of the specific provision or
19 provisions of the law with which the person has failed to
20 comply.

21 (2) Upon receipt of the notice, the person notified
22 shall take immediate steps to comply with the provisions of
23 law specified in the notice.

24 (3) If the person notified fails to comply within a
25 reasonable time after receiving the notice, the Director
26 may hold a hearing at which the person notified may show

1 cause for noncompliance with the law.

2 (4) If upon hearing the Director determines that good
3 and sufficient cause for noncompliance has not been shown,
4 the Director may order the person to submit evidence of
5 compliance within a specified period of not less than 30
6 days.

7 (5) If evidence of compliance has not been submitted to
8 the Director within the period of time prescribed in the
9 order and no administrative appeal from the order has been
10 initiated by the pension fund, the Director may assess a
11 civil penalty of up to \$4,000 ~~\$2,000~~ against the governing
12 body, officer, or official for each noncompliance with an
13 order of the Director. The pension fund shall immediately
14 comply with the Director's order, shall post on the pension
15 fund's website all orders received, and shall note the
16 order in the quarterly board minutes.

17 The Director shall develop by rule, with as much
18 specificity as practicable, the standards and criteria to be
19 used in assessing penalties and their amounts. The standards
20 and criteria shall include, but need not be limited to,
21 consideration of evidence of efforts made in good faith to
22 comply with applicable legal requirements. This rulemaking is
23 subject to the provisions of the Illinois Administrative
24 Procedure Act.

25 If a penalty is not paid within 30 days of the date of
26 assessment or there is no compliance within 30 days after the

1 date of the order, the Director without further notice shall
2 report the act of noncompliance to the Attorney General of this
3 State. It shall be the duty of the Attorney General or, if the
4 Attorney General so designates, the State's Attorney of the
5 county in which the governmental unit is located to apply
6 promptly by complaint on relation of the Director of Insurance
7 in the name of the people of the State of Illinois, as
8 plaintiff, to the circuit court of the county in which the
9 governmental unit is located for enforcement of the penalty
10 prescribed in this Section ~~subsection~~ or for such additional
11 relief as the nature of the case and the interest of the
12 employees of the governmental unit or the public may require.
13 The Attorney General or State's Attorney may order a pension
14 fund's compliance with this Code.

15 (e) Whoever knowingly makes a false certificate, entry, or
16 memorandum upon any of the books or papers pertaining to any
17 pension fund or upon any statement, report, or exhibit filed or
18 offered for file with the Division or the Director of Insurance
19 in the course of any examination, inquiry, or investigation,
20 with intent to deceive the Director, the Division, or any of
21 its employees is guilty of a Class A misdemeanor.

22 (f) Subsections (b) and (c) shall apply to pension funds
23 established under Article 3 or Article 4 of this Code only
24 prior to the conclusion of the transition period, and this
25 Section shall not apply to the Consolidated Funds.

26 (Source: P.A. 101-610, eff. 1-1-20.)

1 (40 ILCS 5/4-109.3)

2 Sec. 4-109.3. Employee creditable service.

3 (a) As used in this Section:

4 "Final monthly salary" means the monthly salary attached to
5 the rank held by the firefighter at the time of his or her last
6 withdrawal from service under a particular pension fund.

7 "Last pension fund" means the pension fund in which the
8 firefighter was participating at the time of his or her last
9 withdrawal from service.

10 (b) The benefits provided under this Section are available
11 only to a firefighter who:

12 (1) is a firefighter at the time of withdrawal from the
13 last pension fund and for at least the final 3 years of
14 employment prior to that withdrawal;

15 (2) has established service credit with at least one
16 pension fund established under this Article other than the
17 last pension fund;

18 (3) has a total of at least 20 years of service under
19 the various pension funds established under this Article
20 and has attained age 50; and

21 (4) is in service on or after the effective date of
22 this amendatory Act of the 93rd General Assembly.

23 (c) A firefighter who is eligible for benefits under this
24 Section may elect to receive a retirement pension from each
25 pension fund under this Article in which the firefighter has at

1 least one year of service credit but has not received a refund
2 under Section 4-116 (unless the firefighter repays that refund
3 under subsection (g)) or subsection (c) of Section 4-118.1, by
4 applying in writing and paying the contribution required under
5 subsection (i).

6 (d) From each such pension fund other than the last pension
7 fund, in lieu of any retirement pension otherwise payable under
8 this Article, a firefighter to whom this Section applies may
9 elect to receive a monthly pension of 1/12th of 2.5% of his or
10 her final monthly salary under that fund for each month of
11 service in that fund, subject to a maximum of 75% of that final
12 monthly salary.

13 (e) From the last pension fund, in lieu of any retirement
14 pension otherwise payable under this Article, a firefighter to
15 whom this Section applies may elect to receive a monthly
16 pension calculated as follows:

17 The last pension fund shall calculate the retirement
18 pension that would be payable to the firefighter under
19 ~~subsection (a)~~ of Section 4-109 as if he or she had
20 participated in that last pension fund during his or her entire
21 period of service under all pension funds established under
22 this Article (excluding any period of service for which the
23 firefighter has received a refund under Section 4-116, unless
24 the firefighter repays that refund under subsection (g), or for
25 which the firefighter has received a refund under subsection
26 (c) of Section 4-118.1). From this hypothetical pension there

1 shall be subtracted the original amounts of the retirement
2 pensions payable to the firefighter by all other pension funds
3 under subsection (d). The remainder is the retirement pension
4 payable to the firefighter by the last pension fund under this
5 subsection (e).

6 (f) Pensions elected under this Section shall be subject to
7 increases as provided in ~~subsection (d)~~ of Section 4-109.1.

8 (g) A current firefighter may reinstate creditable service
9 in a pension fund established under this Article that was
10 terminated upon receipt of a refund, by payment to that pension
11 fund of the amount of the refund together with interest thereon
12 at the rate of 6% per year, compounded annually, from the date
13 of the refund to the date of payment. A repayment of a refund
14 under this Section may be made in equal installments over a
15 period of up to 10 years, but must be paid in full prior to
16 retirement.

17 (h) As a condition of being eligible for the benefits
18 provided in this Section, a person who is hired to a position
19 as a firefighter on or after July 1, 2004 must, within 21
20 months after being hired, notify the new employer, all of his
21 or her previous employers under this Article, and the Public
22 Pension Division of the Division of Insurance of the Department
23 of Financial and Professional Regulation of his or her intent
24 to receive the benefits provided under this Section.

25 (i) In order to receive a pension under this Section or an
26 occupational disease disability pension for which he or she

1 becomes eligible due to the application of subsection (m) of
2 this Section, a firefighter must pay to each pension fund from
3 which he or she has elected to receive a pension under this
4 Section a contribution equal to 1% of monthly salary for each
5 month of service credit that the firefighter has in that fund
6 (other than service credit for which the firefighter has
7 already paid the additional contribution required under
8 subsection (c) of Section 4-118.1), together with interest
9 thereon at the rate of 6% per annum, compounded annually, from
10 the firefighter's first day of employment with that fund or the
11 first day of the fiscal year of that fund that immediately
12 precedes the firefighter's first day of employment with that
13 fund, whichever is earlier.

14 In order for a firefighter who, as of the effective date of
15 this amendatory Act of the 93rd General Assembly, has not begun
16 to receive a pension under this Section or an occupational
17 disease disability pension under subsection (m) of this Section
18 and who has contributed 1/12th of 1% of monthly salary for each
19 month of service credit that the firefighter has in that fund
20 (other than service credit for which the firefighter has
21 already paid the additional contribution required under
22 subsection (c) of Section 4-118.1), together with the required
23 interest thereon, to receive a pension under this Section or an
24 occupational disease disability pension for which he or she
25 becomes eligible due to the application of subsection (m) of
26 this Section, the firefighter must, within one year after the

1 effective date of this amendatory Act of the 93rd General
2 Assembly, make an additional contribution equal to 11/12ths of
3 1% of monthly salary for each month of service credit that the
4 firefighter has in that fund (other than service credit for
5 which the firefighter has already paid the additional
6 contribution required under subsection (c) of Section
7 4-118.1), together with interest thereon at the rate of 6% per
8 annum, compounded annually, from the firefighter's first day of
9 employment with that fund or the first day of the fiscal year
10 of that fund that immediately precedes the firefighter's first
11 day of employment with the fund, whichever is earlier. A
12 firefighter who, as of the effective date of this amendatory
13 Act of the 93rd General Assembly, has not begun to receive a
14 pension under this Section or an occupational disease
15 disability pension under subsection (m) of this Section and who
16 has contributed 1/12th of 1% of monthly salary for each month
17 of service credit that the firefighter has in that fund (other
18 than service credit for which the firefighter has already paid
19 the additional contribution required under subsection (c) of
20 Section 4-118.1), together with the required interest thereon,
21 in order to receive a pension under this Section or an
22 occupational disease disability pension under subsection (m)
23 of this Section, may elect, within one year after the effective
24 date of this amendatory Act of the 93rd General Assembly to
25 forfeit the benefits provided under this Section and receive a
26 refund of that contribution.

1 (j) A retired firefighter who is receiving pension payments
2 under Section 4-109 may reenter active service under this
3 Article. Subject to the provisions of Section 4-117, the
4 firefighter may receive credit for service performed after the
5 reentry if the firefighter (1) applies to receive credit for
6 that service, (2) suspends his or her pensions under this
7 Section, and (3) makes the contributions required under
8 subsection (i).

9 (k) A firefighter who is newly hired or promoted to a
10 position as a firefighter shall not be denied participation in
11 a fund under this Article based on his or her age.

12 (l) If a firefighter who elects to make contributions under
13 subsection (c) of Section 4-118.1 for the pension benefits
14 provided under this Section becomes entitled to a disability
15 pension under Section 4-110, the last pension fund is
16 responsible to pay that disability pension and the amount of
17 that disability pension shall be based only on the
18 firefighter's service with the last pension fund.

19 (m) Notwithstanding any provision in Section 4-110.1 to the
20 contrary, if a firefighter who elects to make contributions
21 under subsection (c) of Section 4-118.1 for the pension
22 benefits provided under this Section becomes entitled to an
23 occupational disease disability pension under Section 4-110.1,
24 each pension fund to which the firefighter has made
25 contributions under subsection (c) of Section 4-118.1 must pay
26 a portion of that occupational disease disability pension equal

1 to the proportion that the firefighter's service credit with
2 that pension fund for which the contributions under subsection
3 (c) of Section 4-118.1 have been made bears to the
4 firefighter's total service credit with all of the pension
5 funds for which the contributions under subsection (c) of
6 Section 4-118.1 have been made. A firefighter who has made
7 contributions under subsection (c) of Section 4-118.1 for at
8 least 5 years of creditable service shall be deemed to have met
9 the 5-year creditable service requirement under Section
10 4-110.1, regardless of whether the firefighter has 5 years of
11 creditable service with the last pension fund.

12 (n) If a firefighter who elects to make contributions under
13 subsection (c) of Section 4-118.1 for the pension benefits
14 provided under this Section becomes entitled to a disability
15 pension under Section 4-111, the last pension fund is
16 responsible to pay that disability pension, provided that the
17 firefighter has at least 7 years of creditable service with the
18 last pension fund. In the event a firefighter began employment
19 with a new employer as a result of an intergovernmental
20 agreement that resulted in the elimination of the previous
21 employer's fire department, the firefighter shall not be
22 required to have 7 years of creditable service with the last
23 pension fund to qualify for a disability pension under Section
24 4-111. Under this circumstance, a firefighter shall be required
25 to have 7 years of total combined creditable service time to
26 qualify for a disability pension under Section 4-111. The

1 disability pension received pursuant to this Section shall be
2 paid by the previous employer and new employer in proportion to
3 the firefighter's years of service with each employer.

4 (Source: P.A. 95-1032, eff. 2-17-09; 95-1036, eff. 2-17-09.)

5 Section 90. The State Mandates Act is amended by adding
6 Section 8.44 as follows:

7 (30 ILCS 805/8.44 new)

8 Sec. 8.44. Exempt mandate. Notwithstanding Sections 6 and 8
9 of this Act, no reimbursement by the State is required for the
10 implementation of any mandate created by this amendatory Act of
11 the 101st General Assembly.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 40 ILCS 5/1A-104

4 40 ILCS 5/1A-113

5 40 ILCS 5/4-109.3

6 30 ILCS 805/8.44 new