



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1645

Introduced 2/8/2023, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

40 ILCS 5/24-107

from Ch. 108 1/2, par. 24-107

Amends the Deferred Compensation Article of the Illinois Pension Code. Provides that "eligible sponsoring entity" means a school district organized under the Chicago School District Article of the School Code; the City of Chicago as the sponsoring entity for the City of Chicago Deferred Compensation Plan; or Cook County as the sponsoring entity for the Cook County Deferred Compensation Plan. Authorizes an eligible sponsoring entity to automatically enroll employees in its deferred compensation program. Provides that the eligible sponsoring entity shall continue to be subject to specified fiduciary duty provisions under the General Provisions Article of the Illinois Pension Code. Provides that an employee who is automatically enrolled in the deferred compensation program shall contribute 3% of his or her pretax gross compensation for each compensation period into his or her account. Removes language providing that the provisions authorizing local government deferred compensation plans does not limit the power or authority of any unit of local government, school district, or any institution supported in whole or in part by public funds to establish and administer any other deferred compensation plans that may be authorized by law and deemed appropriate by the officials of such subdivisions or institutions. Contains provisions concerning fiduciary duties; availability of multiple plans or programs; elections not to participate; refunds; and increases to the default contribution rate. Effective immediately.

LRB103 27812 RPS 54190 b

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
5 changing Section 24-107 as follows:

6 (40 ILCS 5/24-107) (from Ch. 108 1/2, par. 24-107)

7 Sec. 24-107. Local government plans.

8 (a) Any unit of local government or school district may
9 establish for its employees a deferred compensation program.
10 Participation shall be by written agreement between each
11 employee and the legislative authority of the unit of local
12 government or school district providing for the deferral of
13 such compensation and the subsequent investment and
14 administration of such funds.

15 (b) Any unit of local government may establish an
16 employer-funded money purchase retirement plan for those of
17 its full time employees who are not eligible to participate in
18 any pension fund or retirement system established under
19 Articles 2 through 18 of this Code. Contributions to the plan
20 shall be made by the unit of local government only from general
21 purpose funds not derived from real property taxes imposed by
22 the unit, at a rate to be determined from time to time by the
23 unit of local government. However, the rate of employer

1 contribution shall be (i) the same for all employees
2 participating in the plan, and (ii) not more than 10% of the
3 employee's salary.

4 Any benefits accruing to the participants in a retirement
5 plan established under this subsection shall be protected from
6 impairment in accordance with Article XIII, Section 5 of the
7 Illinois Constitution. However, the unit of local government
8 establishing such a plan may terminate it at any time, unless
9 it has otherwise contractually agreed with its participating
10 employees.

11 (c) The agency or department designated by the unit of
12 local government or school district to establish and
13 administer a plan or program authorized under subsection (a)
14 or (b) of this Section may invest the assets of the plan in
15 investments deemed appropriate by the agency or department,
16 including, but not limited to, life insurance or annuity
17 contracts, and share or share certificate accounts of State or
18 federal credit unions, the accounts of which are insured as
19 required by the Illinois Credit Union Act or the Federal
20 Credit Union Act, whichever is applicable. The payment of
21 employer contributions to a retirement plan established under
22 subsection (b), and investment and payment to a participant of
23 deferred compensation and income or gain thereon, if any,
24 shall not be construed to be prohibited uses of the general
25 assets of the unit of local government or school district.

26 (d) In this subsection, "eligible sponsoring entity"

1 means:

2 (1) a school district organized under Article 34 of
3 the School Code;

4 (2) the City of Chicago as the sponsoring entity for
5 the City of Chicago Deferred Compensation Plan; or

6 (3) Cook County as the sponsoring entity for the Cook
7 County Deferred Compensation Plan.

8 An eligible sponsoring entity is authorized to
9 automatically enroll all active employees into its deferred
10 compensation program. An eligible sponsoring entity shall
11 continue to be subject to the fiduciary duty provisions in
12 Article 1 of this Code. If multiple employer entities
13 participate in a program sponsored by a distinct eligible
14 sponsoring entity, the participating employers shall not have
15 any liability for an employee's decision to participate in or
16 opt out of the deferred compensation program or for the
17 investment decisions of the eligible sponsoring entity or of
18 any enrollee. A participating employer shall not be a
19 fiduciary or considered to be a fiduciary over the program,
20 nor shall a participating employer bear responsibility or
21 liability for the administration, investment decisions,
22 investment performance, investment returns, or design of the
23 program. An eligible sponsoring entity shall begin
24 automatically enrolling all new employees who begin employment
25 on or after the effective date of this amendatory Act of the
26 103rd General Assembly. All employees automatically enrolled

1 into the program shall have the right to elect to not
2 participate, pursuant to the procedures specified in this
3 subsection. If an eligible sponsoring entity makes multiple
4 plans or programs available to employees, automatic enrollment
5 authority shall be available for only one plan or program. If
6 multiple plans or programs are available, a plan under Section
7 457(b) of the Internal Revenue Code of 1986, as amended, shall
8 be the plan into which the eligible sponsoring entity shall
9 automatically enroll employees into. If multiple plans or
10 programs are available and a plan under Section 457(b) of the
11 Internal Revenue Code of 1986, as amended, is not available,
12 the eligible sponsoring entity shall publicly deliberate and
13 decide upon which plan or program shall be used for automatic
14 enrollment.

15 An employee automatically enrolled under this subsection
16 shall contribute 3% of his or her pretax gross compensation
17 for each compensation period into his or her deferred
18 compensation account, unless the member otherwise instructs
19 the eligible sponsoring entity. The eligible sponsoring entity
20 shall create forms that allow employees to elect to not
21 participate in the program. These forms must also allow the
22 employee to change the amount of pretax gross compensation
23 deferred each month, but compensation deferrals must comply
24 with State and federal contribution restrictions. The eligible
25 sponsoring entity shall provide such forms to all employees
26 automatically enrolled into the program. An employee may

1 submit these forms to elect to not participate in the deferred
2 compensation program or to alter contribution amounts at any
3 time.

4 An employee shall have 30 days from the date on which the
5 eligible sponsoring entity provides the notice required under
6 Section 414(w) of the Internal Revenue Code of 1986, as
7 amended, to elect to not participate in the eligible deferred
8 compensation program or to elect to increase or reduce the
9 initial amount of elective deferrals made to the program. In
10 the absence of such affirmative election, the employee shall
11 be automatically enrolled in the program on the first day of
12 the calendar month, or as soon as administratively practicable
13 thereafter, following the 30th day from the date on which the
14 eligible sponsoring entity provides the required notice.

15 An employee who has been automatically enrolled in the
16 deferred compensation program may elect, within 90 days of
17 enrollment, to be withdrawn from the program and receive a
18 refund of amounts deferred, plus or minus any applicable
19 earnings, investment fees, and administrative fees. Any refund
20 amount shall be included in the member's gross income for the
21 taxable year in which the refund is issued.

22 On or after January 1, 2024, the eligible sponsoring
23 entity may elect to increase the automatic annual
24 contributions under this Section. The increase in the rate of
25 contribution, however, shall not exceed 1% of an employee's
26 pretax gross compensation per year, and at no time shall any

1 total contribution exceed any contribution limits established
2 by State or federal law.

3 ~~This Section does not limit the power or authority of any~~
4 ~~unit of local government, school district or any institution~~
5 ~~supported in whole or in part by public funds to establish and~~
6 ~~administer any other deferred compensation plans that may be~~
7 ~~authorized by law and deemed appropriate by the officials of~~
8 ~~such subdivisions or institutions.~~

9 (Source: P.A. 87-794.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.