

# SB1674



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1674

Introduced 2/9/2011, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

40 ILCS 5/12-190.2

from Ch. 108 1/2, par. 12-190.2

Amends the Chicago Park District Article of the Illinois Pension Code. Provides that, in those cases where the injury or death for which a disability or death benefit is payable was caused under circumstances creating a legal liability on the part of some person or entity to pay damages to the disabled employee, then legal proceedings may be taken against that other person or entity to recover damages, notwithstanding the fund's payment of or liability to pay disability or death benefits. Provides that the fund may intervene in any action brought by the disabled employee or his or her personal representative. Authorizes the fund to bring an action against the third party for the recovery of all damages on account of injuries caused to the employee if the employee has not brought such an action within a specified period of time.

LRB097 07607 JDS 47718 b

FISCAL NOTE ACT  
MAY APPLY

PENSION IMPACT  
NOTE ACT MAY  
APPLY

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 Section 12-190.2 as follows:

6 (40 ILCS 5/12-190.2) (from Ch. 108 1/2, par. 12-190.2)

7 Sec. 12-190.2. Overpayment; deduction; action by fund  
8 against third party; subrogation.

9 (a) The amount of any overpayment, of any pension or  
10 benefit granted under this Article, due to fraud,  
11 misrepresentation or error, may be deducted from future  
12 payments or refunds made to the recipient of the overpayment.  
13 The board also may withhold payment of any benefits or pensions  
14 payable under this Article where any type of lawsuit or  
15 Workers' Compensation suit has been instituted until the  
16 specific liability of the board and the fund for payments due  
17 is established by the adjudication or dismissal of the suit.  
18 Any such action of the board shall relieve and release the  
19 board and the fund from any liability for any moneys deducted  
20 or withheld.

21 (b) If the injury or death for which a disability or death  
22 benefit is payable under this Article was caused under  
23 circumstances creating a legal liability on the part of some

1 person or entity (hereinafter "third party") to pay damages to  
2 the disabled employee, legal proceedings may be taken against  
3 the third party to recover damages, notwithstanding the fund's  
4 payment of, or liability to pay, disability or death benefits  
5 under this Article. In that case, however, if the action  
6 against the third party is brought by the disabled employee or  
7 his or her personal representative and judgment is obtained and  
8 paid, or settlement is made with the third party, either with  
9 or without suit, from the amount received by the employee or  
10 personal representative, then there shall be paid to the fund  
11 the amount of money representing the death or disability  
12 benefits paid or to be paid to the disabled employee pursuant  
13 to the provisions of this Article. If the action against a  
14 third party is brought by the disabled employee or his personal  
15 representative, the fund shall have a claim or lien upon any  
16 recovery, by judgment or settlement, out of which the disabled  
17 employee or his or her personal representative might be  
18 compensated by the third party. The fund may satisfy or enforce  
19 such a claim or lien only from that portion of a recovery, by  
20 settlement or judgment, that has been, or can be, allocated or  
21 attributed to past and future lost salary. The fund's claim or  
22 lien shall not be satisfied or enforced from that portion of a  
23 recovery that has been, or can be, allocated or attributed to  
24 medical care and treatment, pain and suffering, loss of  
25 consortium, or attorney's fees and costs.

26 If an action is brought by the disabled employee or his or

1 her personal representative, that person shall forthwith  
2 notify the fund, by personal service or registered mail, of  
3 that fact and of the name of the court where the suit is  
4 brought, and that person shall also file proof of the notice in  
5 that action. The fund may, at any time thereafter, intervene in  
6 that action upon its own motion. Therefore, no release or  
7 settlement of claim for damages by reason of injury to the  
8 disabled employee, and no satisfaction of judgment in such a  
9 proceeding, shall be valid without the written consent of the  
10 board authorized by this Code to administer the fund created  
11 under this Article, except that the consent of the board shall  
12 be provided expeditiously following a settlement or judgment.

13 If the disabled employee or his or her personal  
14 representative has not instituted an action against a third  
15 party and not more than 3 months remain before such an action  
16 would thereafter be barred by law, the fund may, in its own  
17 name or in the name of the personal representative, commence a  
18 proceeding against the third party for the recovery of all  
19 damages on account of injuries caused to the employee. From any  
20 amount so recovered, the fund shall pay to the personal  
21 representative of the disabled employee all sums collected from  
22 the third party by judgment or otherwise in excess of (i) the  
23 amount of disability or death benefits paid or to be paid under  
24 this Article to the disabled employee or his personal  
25 representative and (ii) the costs, attorney's fees, and  
26 reasonable expenses incurred by the fund in making the

1 collection or in enforcing the liability. The fund's recovery  
2 shall be satisfied only from that portion of a recovery, by  
3 judgment or settlement, that has been, or can be, allocated or  
4 attributed to past and future lost salary. The fund's recovery  
5 shall not be satisfied from that portion of the recovery that  
6 has been or can be allocated or attributed to medical care and  
7 treatment, pain and suffering, loss of consortium, or  
8 attorney's fees and costs.

9 Additionally, with respect to any right of subrogation  
10 asserted by the fund under this Section, the fund may, in its  
11 discretion, determine what amount from past or future salary  
12 shall be appropriate under the circumstances to collect from  
13 the recovery obtained on behalf of the disabled employee.

14 (Source: P.A. 86-1488.)