



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3762

by Rep. Thomas Morrison

SYNOPSIS AS INTRODUCED:

40 ILCS 5/3-101	from Ch. 108 1/2, par. 3-101
40 ILCS 5/3-101.5 new	
40 ILCS 5/3-150	from Ch. 108 1/2, par. 3-150
40 ILCS 5/4-101	from Ch. 108 1/2, par. 4-101
40 ILCS 5/4-101.5 new	
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
40 ILCS 5/7-134.5 new	
40 ILCS 5/7-210	from Ch. 108 1/2, par. 7-210

Amends the Illinois Pension Code. In the Downstate Firefighter and Downstate Police Articles, provides that a municipality may, by ordinance, assume local control of the municipality's police or firefighter's pension fund, with the power to change the terms of the plan. In the IMRF Article, provides that a municipality may end its participation in IMRF and create its own municipal pension fund; specifies certain conditions and provides for transfer of certain contributions and liabilities from IMRF to the new municipal pension fund.

LRB099 02645 RPS 22651 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 3-101, 3-150, 4-101, 4-142, 7-109, and 7-210 and by
6 adding Sections 3-101.5, 4-101.5, and 7-134.5 as follows:

7 (40 ILCS 5/3-101) (from Ch. 108 1/2, par. 3-101)

8 Sec. 3-101. Creation of fund. Except as provided in Section
9 3-101.5, in ~~in~~ each municipality, as defined in Section 3-103,
10 the city council or the board of trustees, as the case may be,
11 shall establish and administer a police pension fund, as
12 prescribed in this Article, for the benefit of its police
13 officers and of their surviving spouses, children, and certain
14 other dependents. The duty of the corporate authorities of a
15 municipality to establish and administer a police pension fund
16 shall be suspended during any period during which the fund is
17 dissolved under Section 3-144.6 of this Code.

18 (Source: P.A. 97-99, eff. 1-1-12.)

19 (40 ILCS 5/3-101.5 new)

20 Sec. 3-101.5. Local control of pension fund.

21 (a) The corporate authorities of a municipality that has a
22 police pension fund under this Article may, by ordinance,

1 assume control of the police pension fund. Control of the
2 police pension fund shall include responsibility for its
3 liabilities.

4 (b) After assuming control of the police pension fund,
5 including assumption of responsibility for its liabilities,
6 the municipality may, by ordinance, maintain the police pension
7 fund in accordance with this Article or make any changes to the
8 police pension fund that are consistent with the requirements
9 of this Section and the Constitution and laws of the State of
10 Illinois and the United States, including but not limited to
11 developing and implementing a new or different retirement plan.

12 (c) Notwithstanding any other provision of this Article,
13 upon the assumption of control of the police pension fund by
14 the municipality in conformance with this Section, including
15 assumption of responsibility for the police pension fund's
16 liabilities, the provisions of this Article, other than this
17 Section, shall cease to apply to the municipality.

18 (40 ILCS 5/3-150) (from Ch. 108 1/2, par. 3-150)

19 Sec. 3-150. Applicability of home rule powers. A home rule
20 unit, as defined in Article VII of the 1970 Illinois
21 Constitution or any amendment thereto, shall have no power to
22 change, alter, or amend in any way the provisions of this
23 Article, but it may assume local control of its police pension
24 fund in accordance with Section 3-101.5. A home rule unit which
25 is a municipality, as defined in Section 3-103, shall not

1 provide for, singly or as a part of any plan or program, by any
2 means whatsoever, any type of retirement or annuity benefit to
3 a police officer other than through establishment of a fund as
4 provided in this Article, unless it has assumed local control
5 of its police pension fund under Section 3-101.5.

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

7 (40 ILCS 5/4-101) (from Ch. 108 1/2, par. 4-101)

8 Sec. 4-101. Creation of fund. Except as provided in Section
9 4-101.5, in ~~in~~ each municipality as defined in Section 4-103,
10 the city council or the board of trustees, as the case may be,
11 shall establish and administer a firefighters' pension fund as
12 prescribed in this Article, for the benefit of its firefighters
13 and of their surviving spouses, children and certain other
14 dependents. The duty of the corporate authorities of a
15 municipality to establish and administer a firefighters'
16 pension fund shall be suspended during any period during which
17 the fund is dissolved under subsection (c) of Section 4-106.1
18 of this Code.

19 (Source: P.A. 97-99, eff. 1-1-12.)

20 (40 ILCS 5/4-101.5 new)

21 Sec. 4-101.5. Local control of pension fund.

22 (a) The corporate authorities of a municipality that has a
23 firefighters' pension fund under this Article may, by
24 ordinance, assume control of the firefighters' pension fund.

1 Control of the firefighters' pension fund shall include
2 responsibility for its liabilities.

3 (b) After assuming control of the firefighters' pension
4 fund, including assumption of responsibility for its
5 liabilities, the municipality may, by ordinance, maintain the
6 firefighters' pension fund in accordance with this Article or
7 make any changes to the firefighters' pension fund that are
8 consistent with the requirements of this Section and the
9 Constitution and laws of the State of Illinois and the United
10 States, including but not limited to developing and
11 implementing a new or different retirement plan.

12 (c) Notwithstanding any other provision of this Article,
13 upon the assumption of control of the firefighters' pension
14 fund by the municipality in conformance with this Section,
15 including assumption of responsibility for the firefighters'
16 pension fund's liabilities, the provisions of this Article,
17 other than this Section, shall cease to apply to the
18 municipality.

19 (40 ILCS 5/4-142) (from Ch. 108 1/2, par. 4-142)

20 Sec. 4-142. Applicability of home rule powers. A home rule
21 unit, as defined in Article VII of the 1970 Illinois
22 Constitution or any amendment thereto, shall have no power to
23 change, alter, or amend in any way the provisions of this
24 Article, but it may assume local control of its firefighters'
25 pension fund in accordance with Section 4-101.5. A home rule

1 unit which is a municipality, as defined in Section 4-103,
2 shall not provide for, singly or as a part of any plan or
3 program, by any means whatsoever, any type of retirement or
4 annuity benefit to a firefighter other than through
5 establishment of a fund as provided in this Article as now or
6 hereafter amended, unless it has assumed local control of its
7 firefighters' pension fund under Section 3-101.5.

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

9 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

10 Sec. 7-109. Employee.

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

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

19 2. Under the usual common law rules applicable in
20 determining the employer-employee relationship, has the
21 status of an employee with a municipality, or any
22 instrumentality thereof, or a participating
23 instrumentality, including aldermen, county supervisors
24 and other persons (excepting those employed as independent
25 contractors) who are paid compensation, fees, allowances

1 or other emolument for official duties, and, in counties,
2 the several county fee offices.

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

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

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

24 (a) Are eligible for inclusion under any of the
25 following laws:

26 1. "An Act in relation to an Illinois State

1 Teachers' Pension and Retirement Fund", approved May
2 27, 1915, as amended;

3 2. Articles 15 and 16 of this Code.

4 However, such persons shall be included as employees to
5 the extent of earnings that are not eligible for inclusion
6 under the foregoing laws for services not of an
7 instructional nature of any kind.

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

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

1 "employee", and (ii) any chief of police who elects to
2 participate in this Fund under Section 3-109.1 of this
3 Code, regardless of whether such person continues to be
4 employed as chief of police or is employed in some other
5 rank or capacity within the police department, shall be an
6 employee under this Article for so long as such person is
7 employed to perform police duties by a participating
8 municipality and has not lawfully rescinded that election.

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

19 (d) Become an employee of any of the following
20 participating instrumentalities on or after the effective
21 date of this amendatory Act of the 98th General Assembly:
22 the Illinois Municipal League; the Illinois Association of
23 Park Districts; the Illinois Supervisors, County
24 Commissioners and Superintendents of Highways Association;
25 an association, or not-for-profit corporation, membership
26 in which is authorized under Section 85-15 of the Township

1 Code; the United Counties Council; or the Will County
2 Governmental League.

3 (e) Are employees of a former participating
4 municipality that has terminated participation in this
5 Fund and established its own municipal pension fund in
6 accordance with Section 7-134.5.

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

26 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;

1 97-813, eff. 7-13-12; 98-599, eff. 6-1-14; 98-712, eff.
2 7-16-14.)

3 (40 ILCS 5/7-134.5 new)

4 Sec. 7-134.5. Termination of participation; creation of
5 new municipal pension fund.

6 (a) The corporate authorities of a participating
7 municipality under this Article may, by ordinance, terminate
8 its participation in this Fund and establish its own municipal
9 pension fund. The ordinance must explicitly include:

10 (1) a provision accepting the terms of subsection
11 (d-10) of Section 7-210 of this Code;

12 (2) a provision assuming responsibility for any
13 liabilities arising out of the termination of the
14 municipality's participation in IMRF and the creation of
15 the new municipal pension fund; and

16 (3) a provision detailing the effect of the ordinance
17 on the Social Security status of the affected employees.

18 (b) The retirement plan of the new municipal pension fund
19 may take any form that the corporate authorities may specify by
20 ordinance, so long as it is consistent with the requirements of
21 this Section, the Constitution and laws of the State of
22 Illinois and the United States, and any applicable contracts or
23 collective bargaining agreements.

24 (c) Upon termination of participation in IMRF, the
25 provisions of this Article, other than this Section and

1 subsection (d-10) of Section 7-210, shall cease to apply to the
2 municipality.

3 (40 ILCS 5/7-210) (from Ch. 108 1/2, par. 7-210)

4 Sec. 7-210. Funds.

5 (a) All money received by the board shall immediately be
6 deposited with the State Treasurer for the account of the fund,
7 or in the case of funds received under Section 7-199.1, in a
8 separate account maintained for that purpose. All
9 disbursements of funds held by the State Treasurer shall be
10 made only upon warrants of the State Comptroller drawn upon the
11 Treasurer as custodian of this fund upon vouchers signed by the
12 person or persons designated for such purpose by resolution of
13 the board. The Comptroller is authorized to draw such warrants
14 upon vouchers so signed, including warrants payable to the Fund
15 for deposit in a revolving account authorized by Section
16 7-195.1. The Treasurer shall accept all warrants so signed and
17 shall be released from liability for all payments made thereon.
18 Vouchers shall be drawn only upon proper authorization by the
19 board as properly recorded in the official minute books of the
20 meetings of the board.

21 (b) All securities of the fund when received shall be
22 deposited with the State Treasurer who shall provide adequate
23 safe deposit facilities for their preservation and have custody
24 of them.

25 (c) The assets of the fund shall be invested as one fund,

1 and no particular person, municipality, or instrumentality
2 thereof or participating instrumentality shall have any right
3 in any specific security or in any item of cash other than an
4 undivided interest in the whole.

5 (d) Except as provided in subsection (d-5), whenever any
6 employees of a municipality or participating instrumentality
7 have been or shall be excluded from participation in this fund
8 by virtue of the application of paragraph b of Section 7-109
9 (2), the board shall issue a voucher authorizing the
10 Comptroller to draw his warrant upon the Treasurer as custodian
11 of this fund in an amount equal to the accumulated
12 contributions of such employees. Such warrant shall be drawn in
13 favor of the appropriate fund of the retirement fund in which
14 such employees have or shall become participants. Such transfer
15 shall terminate any further rights of such employees under this
16 fund.

17 (d-5) Upon creation of a newly established Article 3 police
18 pension fund by referendum under Section 3-145 or by census
19 under Section 3-105, the following amounts shall be transferred
20 from this Fund to the new police pension fund, within 30 days
21 after an application therefor is received from the new pension
22 fund:

23 (1) the amounts actually contributed to this Fund as
24 employee contributions by or on behalf of the police
25 officers transferring to the new pension fund for their
26 service as police officers of the municipality that is

1 establishing the new pension fund, plus interest on those
2 amounts at the rate of 6% per year, compounded annually,
3 from the date of contribution to the date of transfer to
4 the new pension fund, and

5 (2) an amount representing employer contributions,
6 equal to the total amount determined under item (1).

7 This transfer terminates any further rights of such police
8 officers in this Fund arising out of their service as police
9 officers of the municipality that is establishing the new
10 pension fund.

11 (d-10) Upon termination of a municipality's participation
12 in this Fund and creation of a new municipal pension fund under
13 Section 7-134.5, the following amounts shall be transferred
14 from this Fund to the new pension fund, within 90 days after an
15 application therefor is received from the new pension fund:

16 (1) the amounts actually contributed to this Fund as
17 employee contributions by or on behalf of the employees
18 transferring to the new pension fund for their service as
19 employees of the municipality that is establishing the new
20 pension fund, plus interest on those amounts at the rate of
21 6% per year, compounded annually, from the date of
22 contribution to the date of transfer to the new pension
23 fund, and

24 (2) an amount representing employer contributions,
25 equal to the total amount determined under item (1).

26 This transfer terminates any further rights of such employees

1 in this Fund arising out of their service as employees of the
2 municipality that is establishing the new pension fund.

3 (e) If a participating instrumentality terminates
4 participation because it fails to meet the requirements of
5 Section 7-108, it shall pay to the fund the amount equal to any
6 net debit balance in its municipality reserve account and
7 account receivable. Its successors, and assigns and
8 transferees of its assets shall be obligated to make this
9 payment to the extent of the value of assets transferred to
10 them. The fund shall pay an amount equal to any net credit
11 balance to the participating instrumentality, its successors
12 or assigns. Any remaining net debit or credit balance not
13 collectible or payable shall be transferred to the terminated
14 municipality reserve account. The fund shall pay to each
15 employee of the participating instrumentality an amount equal
16 to his credits in the employee reserves. The employees shall
17 have no further rights to any benefits from the fund, except
18 that annuities awarded prior to the date of termination shall
19 continue to be paid.

20 (Source: P.A. 98-729, eff. 7-26-14.)