



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB5684

by Rep. Peter Breen

#### SYNOPSIS AS INTRODUCED:

5 ILCS 120/2	from Ch. 102, par. 42
40 ILCS 5/7-114	from Ch. 108 1/2, par. 7-114
40 ILCS 5/7-115	from Ch. 108 1/2, par. 7-115

Amends the Illinois Municipal Retirement Fund (IMRF) Article of the Illinois Pension Code. Provides that any payment that (i) is made by a participating municipality to an employee during the year before the employee's termination of service and after the employee has expressed to the municipality his or her intent to retire and (ii) would have the effect of increasing the employee's rate of earnings by more than 6%, shall not be deemed to be "earnings" for pension purposes and shall not be included in the determination of the rate of earnings, unless the governing board of the municipality has separately confirmed that payment to that specific employee, by ordinance or resolution, at a meeting open to the public and posted and held in accordance with the requirements of the Open Meetings Act. Amends the Open Meetings Act to make a conforming change. Effective immediately.

LRB099 19522 EFG 43916 b

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 Open Meetings Act is amended by changing  
5 Section 2 as follows:

6 (5 ILCS 120/2) (from Ch. 102, par. 42)

7 Sec. 2. Open meetings.

8 (a) Openness required. All meetings of public bodies shall  
9 be open to the public unless excepted in subsection (c) and  
10 closed in accordance with Section 2a.

11 (b) Construction of exceptions. The exceptions contained  
12 in subsection (c) are in derogation of the requirement that  
13 public bodies meet in the open, and therefore, the exceptions  
14 are to be strictly construed, extending only to subjects  
15 clearly within their scope. The exceptions authorize but do not  
16 require the holding of a closed meeting to discuss a subject  
17 included within an enumerated exception.

18 (c) Exceptions. A public body may hold closed meetings to  
19 consider the following subjects:

20 (1) The appointment, employment, compensation,  
21 discipline, performance, or dismissal of specific  
22 employees of the public body or legal counsel for the  
23 public body, including hearing testimony on a complaint

1 lodged against an employee of the public body or against  
2 legal counsel for the public body to determine its  
3 validity. However, a meeting to consider an increase in  
4 compensation to a specific employee of a public body that  
5 is subject to subsection (g) of Section 7-114 of the  
6 Illinois Pension Code may not be closed and shall be open  
7 to the public and posted and held in accordance with this  
8 Act.

9 (2) Collective negotiating matters between the public  
10 body and its employees or their representatives, or  
11 deliberations concerning salary schedules for one or more  
12 classes of employees.

13 (3) The selection of a person to fill a public office,  
14 as defined in this Act, including a vacancy in a public  
15 office, when the public body is given power to appoint  
16 under law or ordinance, or the discipline, performance or  
17 removal of the occupant of a public office, when the public  
18 body is given power to remove the occupant under law or  
19 ordinance.

20 (4) Evidence or testimony presented in open hearing, or  
21 in closed hearing where specifically authorized by law, to  
22 a quasi-adjudicative body, as defined in this Act, provided  
23 that the body prepares and makes available for public  
24 inspection a written decision setting forth its  
25 determinative reasoning.

26 (5) The purchase or lease of real property for the use

1 of the public body, including meetings held for the purpose  
2 of discussing whether a particular parcel should be  
3 acquired.

4 (6) The setting of a price for sale or lease of  
5 property owned by the public body.

6 (7) The sale or purchase of securities, investments, or  
7 investment contracts. This exception shall not apply to the  
8 investment of assets or income of funds deposited into the  
9 Illinois Prepaid Tuition Trust Fund.

10 (8) Security procedures, school building safety and  
11 security, and the use of personnel and equipment to respond  
12 to an actual, a threatened, or a reasonably potential  
13 danger to the safety of employees, students, staff, the  
14 public, or public property.

15 (9) Student disciplinary cases.

16 (10) The placement of individual students in special  
17 education programs and other matters relating to  
18 individual students.

19 (11) Litigation, when an action against, affecting or  
20 on behalf of the particular public body has been filed and  
21 is pending before a court or administrative tribunal, or  
22 when the public body finds that an action is probable or  
23 imminent, in which case the basis for the finding shall be  
24 recorded and entered into the minutes of the closed  
25 meeting.

26 (12) The establishment of reserves or settlement of

1 claims as provided in the Local Governmental and  
2 Governmental Employees Tort Immunity Act, if otherwise the  
3 disposition of a claim or potential claim might be  
4 prejudiced, or the review or discussion of claims, loss or  
5 risk management information, records, data, advice or  
6 communications from or with respect to any insurer of the  
7 public body or any intergovernmental risk management  
8 association or self insurance pool of which the public body  
9 is a member.

10 (13) Conciliation of complaints of discrimination in  
11 the sale or rental of housing, when closed meetings are  
12 authorized by the law or ordinance prescribing fair housing  
13 practices and creating a commission or administrative  
14 agency for their enforcement.

15 (14) Informant sources, the hiring or assignment of  
16 undercover personnel or equipment, or ongoing, prior or  
17 future criminal investigations, when discussed by a public  
18 body with criminal investigatory responsibilities.

19 (15) Professional ethics or performance when  
20 considered by an advisory body appointed to advise a  
21 licensing or regulatory agency on matters germane to the  
22 advisory body's field of competence.

23 (16) Self evaluation, practices and procedures or  
24 professional ethics, when meeting with a representative of  
25 a statewide association of which the public body is a  
26 member.

1           (17) The recruitment, credentialing, discipline or  
2 formal peer review of physicians or other health care  
3 professionals for a hospital, or other institution  
4 providing medical care, that is operated by the public  
5 body.

6           (18) Deliberations for decisions of the Prisoner  
7 Review Board.

8           (19) Review or discussion of applications received  
9 under the Experimental Organ Transplantation Procedures  
10 Act.

11           (20) The classification and discussion of matters  
12 classified as confidential or continued confidential by  
13 the State Government Suggestion Award Board.

14           (21) Discussion of minutes of meetings lawfully closed  
15 under this Act, whether for purposes of approval by the  
16 body of the minutes or semi-annual review of the minutes as  
17 mandated by Section 2.06.

18           (22) Deliberations for decisions of the State  
19 Emergency Medical Services Disciplinary Review Board.

20           (23) The operation by a municipality of a municipal  
21 utility or the operation of a municipal power agency or  
22 municipal natural gas agency when the discussion involves  
23 (i) contracts relating to the purchase, sale, or delivery  
24 of electricity or natural gas or (ii) the results or  
25 conclusions of load forecast studies.

26           (24) Meetings of a residential health care facility

1 resident sexual assault and death review team or the  
2 Executive Council under the Abuse Prevention Review Team  
3 Act.

4 (25) Meetings of an independent team of experts under  
5 Brian's Law.

6 (26) Meetings of a mortality review team appointed  
7 under the Department of Juvenile Justice Mortality Review  
8 Team Act.

9 (27) (Blank).

10 (28) Correspondence and records (i) that may not be  
11 disclosed under Section 11-9 of the Public Aid Code or (ii)  
12 that pertain to appeals under Section 11-8 of the Public  
13 Aid Code.

14 (29) Meetings between internal or external auditors  
15 and governmental audit committees, finance committees, and  
16 their equivalents, when the discussion involves internal  
17 control weaknesses, identification of potential fraud risk  
18 areas, known or suspected frauds, and fraud interviews  
19 conducted in accordance with generally accepted auditing  
20 standards of the United States of America.

21 (30) Those meetings or portions of meetings of a  
22 fatality review team or the Illinois Fatality Review Team  
23 Advisory Council during which a review of the death of an  
24 eligible adult in which abuse or neglect is suspected,  
25 alleged, or substantiated is conducted pursuant to Section  
26 15 of the Adult Protective Services Act.

1           (31) Meetings and deliberations for decisions of the  
2           Concealed Carry Licensing Review Board under the Firearm  
3           Concealed Carry Act.

4           (32) Meetings between the Regional Transportation  
5           Authority Board and its Service Boards when the discussion  
6           involves review by the Regional Transportation Authority  
7           Board of employment contracts under Section 28d of the  
8           Metropolitan Transit Authority Act and Sections 3A.18 and  
9           3B.26 of the Regional Transportation Authority Act.

10          (33) Those meetings ~~meeting~~ or portions of meetings of  
11          the advisory committee and peer review subcommittee  
12          created under Section 320 of the Illinois Controlled  
13          Substances Act during which specific controlled substance  
14          prescriber, dispenser, or patient information is  
15          discussed.

16          (d) Definitions. For purposes of this Section:

17          "Employee" means a person employed by a public body whose  
18          relationship with the public body constitutes an  
19          employer-employee relationship under the usual common law  
20          rules, and who is not an independent contractor.

21          "Public office" means a position created by or under the  
22          Constitution or laws of this State, the occupant of which is  
23          charged with the exercise of some portion of the sovereign  
24          power of this State. The term "public office" shall include  
25          members of the public body, but it shall not include  
26          organizational positions filled by members thereof, whether



1 established by law or by a public body itself, that exist to  
2 assist the body in the conduct of its business.

3 "Quasi-adjudicative body" means an administrative body  
4 charged by law or ordinance with the responsibility to conduct  
5 hearings, receive evidence or testimony and make  
6 determinations based thereon, but does not include local  
7 electoral boards when such bodies are considering petition  
8 challenges.

9 (e) Final action. No final action may be taken at a closed  
10 meeting. Final action shall be preceded by a public recital of  
11 the nature of the matter being considered and other information  
12 that will inform the public of the business being conducted.

13 (Source: P.A. 98-49, eff. 7-1-13; 98-63, eff. 7-9-13; 98-756,  
14 eff. 7-16-14; 98-1027, eff. 1-1-15; 98-1039, eff. 8-25-14;  
15 99-78, eff. 7-20-15; 99-235, eff. 1-1-16; 99-480, eff. 9-9-15;  
16 revised 10-14-15.)

17 Section 10. The Illinois Pension Code is amended by  
18 changing Sections 7-114 and 7-115 as follows:

19 (40 ILCS 5/7-114) (from Ch. 108 1/2, par. 7-114)

20 (Text of Section WITHOUT the changes made by P.A. 98-599,  
21 which has been held unconstitutional)

22 Sec. 7-114. Earnings. "Earnings":

23 (a) An amount to be determined by the board, equal to the  
24 sum of:

1           1. The total amount of money paid to an employee for  
2           personal services or official duties as an employee (except  
3           those employed as independent contractors) paid out of the  
4           general fund, or out of any special funds controlled by the  
5           municipality, or by any instrumentality thereof, or  
6           participating instrumentality, including compensation,  
7           fees, allowances, or other emolument paid for official  
8           duties (but not including automobile maintenance, travel  
9           expense, or reimbursements for expenditures incurred in  
10          the performance of duties) and, for fee offices, the fees  
11          or earnings of the offices to the extent such fees are paid  
12          out of funds controlled by the municipality, or  
13          instrumentality or participating instrumentality; and

14          2. The money value, as determined by rules prescribed  
15          by the governing body of the municipality, or  
16          instrumentality thereof, of any board, lodging, fuel,  
17          laundry, and other allowances provided an employee in lieu  
18          of money.

19          (b) For purposes of determining benefits payable under this  
20          fund payments to a person who is engaged in an independently  
21          established trade, occupation, profession or business and who  
22          is paid for his service on a basis other than a monthly or  
23          other regular salary, are not earnings.

24          (c) If a disabled participating employee is eligible to  
25          receive Workers' Compensation for an accidental injury and the  
26          participating municipality or instrumentality which employed

1 the participating employee when injured continues to pay the  
2 participating employee regular salary or other compensation or  
3 pays the employee an amount in excess of the Workers'  
4 Compensation amount, then earnings shall be deemed to be the  
5 total payments, including an amount equal to the Workers'  
6 Compensation payments. These payments shall be subject to  
7 employee contributions and allocated as if paid to the  
8 participating employee when the regular payroll amounts would  
9 have been paid if the participating employee had continued  
10 working, and creditable service shall be awarded for this  
11 period.

12 (d) If an elected official who is a participating employee  
13 becomes disabled but does not resign and is not removed from  
14 office, then earnings shall include all salary payments made  
15 for the remainder of that term of office and the official shall  
16 be awarded creditable service for the term of office.

17 (e) If a participating employee is paid pursuant to "An Act  
18 to provide for the continuation of compensation for law  
19 enforcement officers, correctional officers and firemen who  
20 suffer disabling injury in the line of duty", approved  
21 September 6, 1973, as amended, the payments shall be deemed  
22 earnings, and the participating employee shall be awarded  
23 creditable service for this period.

24 (f) Additional compensation received by a person while  
25 serving as a supervisor of assessments, assessor, deputy  
26 assessor or member of a board of review from the State of

1 Illinois pursuant to Section 4-10 or 4-15 of the Property Tax  
2 Code shall not be earnings for purposes of this Article and  
3 shall not be included in the contribution formula or  
4 calculation of benefits for such person pursuant to this  
5 Article.

6 (g) Notwithstanding the other provisions of this Section,  
7 any payment, whether in the form of a raise or a lump-sum  
8 payment, that

9 (1) is made by a participating municipality to an  
10 employee during the year before the employee's termination  
11 of service and after the employee has expressed to the  
12 municipality his or her intent to retire, and

13 (2) would have the effect of increasing the employee's  
14 rate of earnings under this Article by more than 6%,  
15 shall not be deemed to be "earnings" for the purposes of this  
16 Article, unless the governing board of that participating  
17 municipality has separately confirmed that payment to that  
18 specific employee, by ordinance or resolution, at a meeting  
19 open to the public and posted and held in accordance with the  
20 requirements of the Open Meetings Act.

21 (Source: P.A. 87-740; 88-670, eff. 12-2-94.)

22 (40 ILCS 5/7-115) (from Ch. 108 1/2, par. 7-115)

23 Sec. 7-115. Rate of earnings. "Rate of earnings": The  
24 actual rate upon which the earnings of an employee are  
25 calculated at any time, as certified in a written notice, on

1 file with the board, by the governing body of the municipality,  
2 or instrumentality, or participating instrumentality. For  
3 periods during which the employee did not participate but is  
4 entitled to creditable service, the monthly earnings shall be  
5 considered to be the earnings in the position for each calendar  
6 year divided by the number of months of creditable service in  
7 that year.

8 However, payments excluded from earnings under subsection  
9 (g) of Section 7-114 shall not be included in determining the  
10 rate of earnings.

11 (Source: P.A. 82-596.)

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