

# Pension Legislation and Caselaw Updates

January 21, 2022

Presented by:

Ericka J. Thomas

Ottosen DiNolfo Hasenbalg & Castaldo Ltd.

[ethomas@ottosenlaw.com](mailto:ethomas@ottosenlaw.com)

# Pension Board Legislation Updates

---

# Legislation Passed Last Year

---

## ■ P.A. 102-0059 (effective July 9, 2021)

- Fire chiefs must make reports of injury, illness, or exposure of a secondary firefighter employee to the Illinois Dept. of Insurance.
- This is in addition to already-required reporting the injury, illness, or exposure of a secondary firefighter employee to the primary employer's pension fund.

## ■ P.A. 102-0063 (effective July 9, 2021)

- Active Art. 4 firefighters may transfer up to eight years of creditable service from any Art. 3 police pension fund to their current Art. 4 fund, provided member was not subject to disciplinary action when they terminated employment with the police dept.
- Employee contributions with an employer contribution match plus any interest to reinstate service will be transferred. \*\*\*Application must have been submitted before the six-month window closed (Jan. 8<sup>th</sup>, 2022).

# Legislation Passed Last Year

---

- **P.A. 102-0081 (effective July 9, 2021)**

- The combined creditable service provision has been corrected for Tier 2 firefighters, clarifying that they are eligible to combine service and receive a combined service Tier 2 benefit at retirement.
- For firefighters with service in multiple Art. 4 funds who missed the 21-month window to make notification to combine service, the window has temporarily reopened until Jan. 9, 2023.

- **P.A. 102-0091 (effective July 9, 2021)**

- Amendment to the Art. 6 occupational disease disability pension statute.
- Retired Chicago firefighters are entitled to receive an occupational disease benefit under certain conditions.

# Legislation Passed Last Year

---

- **P.A. 102-0097 (effective Jan. 1, 2022)**

- New exception to the competitive process requirements of 40 ILCS 5/1-113.12 is now allowed for contracts for investment services with an emerging investment manager provided through a qualified manager of emerging investment managers services under certain circumstances set forth by statute.

- **P.A. 102-0113 (effective July 23, 2021)**

- Active Art. 3 police officers may transfer IMRF creditable services as a sheriff's law enforcement employee, person employed by a participating municipality to perform police duties, or law enforcement officer employed on a full-time basis by a forest preserve district.
- Transfer must be completed before the six-month window closes Jan. 22, 2022 (tomorrow!).

# Legislation Passed Last Year

---

- **P.A. 102-0118 (effective July 23, 2021)**

- Illinois retirement systems are now prohibited from investing in for-profit companies that contract to shelter migrant children.
- The Illinois Investment Policy Board shall create a list of restricted companies and distribute it to all retirement systems by July 1, 2022.
- The Illinois Investment Policy Board may, at least four years after the effective date of an Act establishing a prohibited transaction, cease actions regarding such prohibited transactions if divestment is no longer necessary.

- **P.A. 102-0210 (effective July 30, 2021)**

- An active member in the State Employees' Retirement System may transfer Art. 4 service as arson investigator to SERS.

# Legislation Passed Last Year

---

- **P.A. 102-0263 (effective Aug. 6, 2021)**

- Property Tax Extension Limitation (PTELL) is amended to exclude from levy limitations bonds issued by the Chicago Park District for pension contributions.
- The financing provision for the related retirement fund has been amended to address actuarially-determined funding requirements, which now include the use of entry-age normal and 100% funding goals, beginning with payment year 2021.

- **P.A. 102-0337 (effective Aug. 12, 2021)**

- Amends Mental Health and Developmental Disabilities Administrative Act.
- Requires creation and maintenance of an online database and resources page of mental health resources specially geared toward first responders.

# Legislation Passed Last Year

---

## ■ P.A. 102-0342 (effective Aug. 13, 2021)

- An Art. 3 police officer may establish option credit for up to five years of service as a participant under Art. 5, provided the officer
  - (i) was a certified officer
  - (ii) applies in writing on or before Dec. 31, 2021
  - (iii) provides evidence of employment
  - (iv) completes 10 years of service under Art. 3, and
  - (v) pays contributions as outlined in this new provision
- Does not apply to an officer who is eligible to receive benefits under Art. 5.

## ■ P.A. 102-0348 (effective Aug. 13, 2021)

- A law enforcement agency or officer may not knowingly and intentionally conduct a background check of a person for the sole reason of that person speaking at an open meeting of a public body, including police disciplinary boards.
- Does not apply where there is a reasonable suspicion of criminal conduct or threat to security.

# Legislation Passed Last Year

---

- **P.A. 102-0352 (effective June 1, 2022)**

- New provision under the First Responders Suicide Prevention Act.
- Outlines how recommendations of the Task Force could be accomplished, as well as how training and objectives of the Act could be accomplished and met.

- **P.A. 102-0375 (effective Aug. 13, 2021)**

- Amends the Civil Service Commission and Fire and Police Commission in the Municipal Code and parallel provisions in the Fire Protection District.
- Removes the “five years immediately preceding” limitation to allow any persons who served as a volunteer, POC, or part-time firefighter to be eligible to take a firefighters’ examination over the age of 35.

# Legislation Passed Last Year

---

- **P.A. 102-0439 (effective Jan. 1, 2022)**
  - Under PSEBA, “health insurance plan” is now defined and limited to the insurance plan options that are codified in the employee’s collective bargaining agreement.
  - If CBA is silent on plan options, available plans for employees shall be negotiated with authorized representative and subject to grievance process.
- **P.A. 102-0479 (effective Aug. 20, 2021)**
  - Amendment to the IMRF provision.
  - A person who meets the criteria to be an executive (municipal) trustee may not serve as an employee trustee.
- **P.A. 102-0602 (effective Aug. 27, 2021)**
  - New Act under which the person or entity that appointed a member of a board who serves without compensation may remove that member for misconduct, official misconduct, or neglect of office.

# Legislation Passed Last Year

---

- **P.A. 102-0603 (effective Jan. 1, 2022)**
  - No board member of a pension fund, investment board, or retirement system may be employed by that fund, board, or system any time during his or her service or 12 months after ceasing service, except under certain conditions.
  
- **P.A. 102-0637 (effective Aug. 27, 2021)**
  - Illinois Police Officers Pension Investment Fund (IPOPIF) and Firefighters' Pension Investment Fund (FPIF) are now participating instrumentalities of IMRF.
  - Board members and employees of IPOPIF and FPIF who otherwise meet IMRF criteria are now eligible for membership.

# Legislation Passed Last Year

---

- **P.A. 102-0653 (effective Jan. 1, 2022)**
  - The six-month review of all closed meeting minutes requirement is now modified to occur every six months or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body.
  - Ad hoc committees shall review closed session minutes at the later of
    - (1) six months from date of last review, or
    - (2) at next scheduled meeting
  - When a public body is dissolved, disbanded, eliminated, or consolidated, the unit of local government that assumes the functions of the public body shall review the closed session minutes of that public body.

# Pending Legislation

---

- HB 308
  - Amends the Downstate Police and Downstate Firefighter Articles of the Illinois Pension Code.
  - Provides that an annual employer contribution shall include an amount sufficient to bring up the total assets of the pension fund to 90% of the total actuarial liabilities of the pension fund by the end of year 2050 (as opposed to 2040).
- The Illinois Municipal League proposes in their 2022 Legislative Agenda that municipalities operating Art. 3 or Art. 4 downstate public safety pension funds should decrease the required funding ratio to 80% of total actuarial liabilities.

# Questions?

---

# Pension Board Caselaw Updates

---

# Disability Pension Benefits

---

- ***Griffin v. Vill. of New Lenox Police Pension Fund***
  - 2021 IL App (3d) 190557 (Jan. 5, 2021).
  - Police officer was injured when he slipped and fell off a curb in a parking lot.
  - Third Dist. affirmed Board's denial of line-of-duty disability pension because he was not performing an "act of duty" when injured.
  - Board's decision to deny was not clearly erroneous.
- ***Hampton v. Bd. of Trustees of the Bolingbrook Police Pension Fund***
  - 2021 IL App (3d) 190416 (Jan. 29, 2021).
  - Police officer suffered shoulder injury when his squad car was struck by a vehicle while he was responding to a traffic accident.
  - Third Dist. Reversed Board's decision to deny line-of-duty disability pension.

# Disability Pension Benefits

---

- ***Staford v. Bd. of Trustees of the Crest Hill Police Pension Fund***
  - 2021 IL App (3) 190779 (Feb. 17, 2021).
  - Officer's gun jammed during gunfire exchange with suspect, and officer subsequently experienced PTSD.
  - Third Dist. affirmed the reversal of the Board's decision to deny line-of-duty disability pension.
  - Court found initial denial against manifest weight of the evidence where all medical professionals who treated and examined officer found his PTSD resulted from the on-duty event.
  
- ***Koniarski v. Retirement Bd. of the Policeman's Annuity and Benefit Fund of the City of Chicago***
  - 2021 IL App (1st) 200501-U (Mar. 22, 2021).
  - Board had previously terminated officer's benefits under Sec. 5-156 of the Illinois Pension Code on the grounds that she was no longer disabled, without offering a limited-duty position.
  - First Dist. reversed Board's decision to terminate.
  - Court found that manifest weight of the evidence showed that her disability was undisputed and the department could not accommodate her disability with a limited-duty position.
  - Therefore, the officer remained entitled to a disability pension.

# Disability Pension Benefits

---

- *Strong v. Bd. of Trustees of the North Chicago Police Pension Fund*
  - 2021 IL App (2d) 200417-U (Apr. 28, 2021).
  - Police officer's medical tests did not reveal an injury until years after the accident on which he alleged entitled him to an act of duty benefit.
  - Second Dist. affirmed in part and reversed in part the Board's decision to an act of duty benefit.
  - Court concluded that finding of no disability was improper because officer's current medical record supports that he is unable to work, so back injury did render officer disabled but officer is only entitled to a non-duty pension.

# Disability Pension Benefits

---

- *Cox v. Retirement Bd. of the County Employees' and Officers' Annuity and Benefit Fund of Cook County*
  - 2021 IL App (2d) 200380 (May 28, 2021).
  - Officer was injured in a crash on an interstate highway while assisting State Police.
  - The Board denied additional disability benefits based on statutory provisions regarding worker's compensation offsets specific to the fund's benefit scheme. The officer had alleged the Board deprived him property without due process, violated the Illinois Constitution, and breached its fiduciary duties.
  - U.S. Federal Dist. Court for the Northern Dist. Issued decision in favor of the pension fund on cross motions for summary judgment.
  - Court found officer's claims without merit, noting that he had foregone his right to pursue remedy under state law through administrative review.

# Disability Pension Benefits

---

- *Girot v. Bd. of Trustees of the Braidwood Police Pension Fund*
  - 2021 IL App (3d) 200008-U (July 9, 2021).
  - Police chief who was injured during prior service elsewhere developed debilitating Complex Regional Pain Syndrome, which also required extensive medication regimen with cognitive side effects to control, following surgery he had while serving as police chief.
  - Third Dist. reversed the Board's denial of a not-on-duty disability pension.
  - Court found the Board relied on medical evidence from prior to the chief's hire and that their opinion that he was no less disabled now than when hired was against the manifest weight of the evidence.
  - Evidence from Independent Medical Examiners indicated police chief was disabled and unfit to perform duties as chief, and entitled to a not-on-duty disability pension.

# Disability Pension Benefits

---

- *Vill. of Roselle v. Bd. of Trustees of the Roselle Firefighters' Pension Fund*
  - 2021 IL App (2d) 200360 (Dec. 28, 2021).
  - Firefighter sustained a disabling back injury while moving bottled water for a fire department event.
  - Firefighter had experienced back problems for several years, was inconsistent about reporting any back injuries when hired at various departments, and neglected to disclose any prior back injury when hired at Roselle.
  - Second Dist. affirmed the decision of the Board to grant line-of-duty benefits because the Board was not required to rely on firefighter's self-reports or weigh his credibility in deciding whether he was disabled or the cause of that disability.
  - Court found that prior misstatements were immaterial to whether the disability resulted from an act of duty.
  - It is not the role of the Board to investigate fraud to determine the appropriateness of awarding disability benefits. The Board must instead notify the local state's attorney of suspected fraud.
  - Moving bottled water was an "act of duty" under 40 ILCS 5/6-110 because the "rules or regulations" of the department required firefighter to follow the chain of command, which directed him to perform this task ("act of duty" does not require direct purpose of saving life or property).

# Pensionable Salary

---

- *Vill. of Hanover Park v. Bd. of Trustees of the Vill. of Hanover Park Police Pension Fund*
  - 2021 IL App (2d) 200380 (May 28, 2021).
  - Second Dist. reversed the Board's determination that holiday pay as bargained for under an agreement with the union was pensionable salary.
  - Previously, the Board classified holiday pay as pensionable salary for the determination of pension benefits under the terms of the collective bargaining agreement between the Village and the Metropolitan Alliance of Police Chapter 102.
  - Court held that the evidence before the Board conclusively established that holiday pay under the agreement is not "fixed" compensation, as is required in order for such pay to be "pensionable" salary as defined in the Illinois Administrative Code.

# Unemployment Benefits

---

- *Prospect Heights Fire Protection District v. Department of Employment Security*
  - 2021 IL App (1st) 182525 (Mar. 16, 2021).
  - First Dist. reversed a determination that a firefighter who was subject to mandatory retirement after reaching the statutorily mandated retirement age was eligible to receive unemployment benefits with his retirement pension benefits.
  - Court held that mandatory retirement constitutes leave without just cause attributable to the employer; thus, the firefighter is not eligible for unemployment benefits.

# Retirement Benefits

---

- *Robbins v. County Employees' and Officers' Annuity and Benefit Fund of Cook County*

- 2021 IL App (1st) 192142 (June 30, 2021).
- The First District sided with the pension fund on an issue regarding when a retiree was entitled to a cost-of-living adjustment under Article 9 of the Illinois Pension Code.
- However, the case is primarily worth reading for its entertainment value on how frustrating it can be to interpret the language of the Illinois Pension Code.

“Article 9, like the rest of the Pension Code, is full of contingencies and qualifications and exceptions and exceptions to exceptions and different rules for different years, using old-fashioned language and murky terms and undefined phrases, often providing for multiple different scenarios (each with exceptions and qualifications to those exceptions) in lengthy single sentences far longer than this one.”

# Benefit Correction

---

- *Chappell v. Board of Trustees of Illinois Municipal Retirement Fund*
  - 2020 IL App (1st) 192255 (Apr. 7, 2021).
  - First Dist. reinstated the decision of the IMRF Board to reduce the benefit of a retired executive director. The director was erroneously granted omitted service credit and knowingly accepted it; thus, the court determined the reduction was proper.
- *Cronholm v. Board of Trustees of the Lockport Township FPD Firefighters' Pension Fund*
  - 2021 IL App (3d) 190636-U (Jan. 26, 2021).
  - Third Dist. reversed the Board's decision to correct a pensioner's final combined creditable service retirement benefit award because it lacked jurisdiction under the Illinois Pension Code.
  - The retired firefighter had been overpaid more than \$2,000 over the first several years of his retirement by one fund (and over \$20,000 by a second fund that had not sought to correct the benefit mistake).
  - However, the court concluded the recently enacted benefit mistake statute did not allow the Board to correct a benefit mistake that occurred prior to the enactment of the statute, despite the fact the mistake was not uncovered until after its enactment.

# Open Meetings Act (OMA)

---

- *City of Bloomington v. Kwame Raoul*
  - 2021 IL App (4th) 190539 (Apr. 26, 2021).
  - Fourth Dist. affirmed the opinion issued by the Attorney General PAC which held that the City of Bloomington violated OMA when it met in closed session to discuss an intergovernmental agreement with the Town of Normal.
  - The closed session's discussion did not meet the standard for the probable or imminent litigation exception, and it exceeded the limits of the exception when the City engaged in other discussion.

# Public Safety Employee Benefits Act (PSEBA)

---

- ***International Association of Fire Fighters, Local 50 v. City of Peoria***
  - 2021 IL App (3d) 190758 (Feb. 2, 2021).
  - The City of Peoria adopted a new PSEBA ordinance which defined certain terms (“injury,” “catastrophic injury” and “gainful work”) used in the Act where it was silent.
  - The Third District found that the ordinance was inconsistent with PSEBA and not a valid exercise of home rule authority. The Illinois Supreme Court has granted the City of Peoria’s Petition for Leave to Appeal and will be reviewing the case.
  
- ***McCaffrey v. Village of Hoffman Estates***
  - 2021 IL App (1st) 200395 (May 11, 2021).
  - First Dist. affirmed the decision in favor of Hoffman Estates, holding that the Village was not obligated to provide health insurance benefits under the PSEBA for the retired police officer’s wife and child after they became eligible for Medicare coverage.

# Public Safety Employee Benefits Act (PSEBA)

---

- *Talerico v. Village of Clarendon Hills*
  - 2021 IL App (2d) 200318 (June 22, 2021).
  - The Second District reversed the decision of the Village to deny PSEBA benefits to a police officer who had been awarded a line-of-duty disability benefit as the result of a left shoulder injury from slipping on ice and snow when responding to a report of a home invasion.
  - The court agreed with the police officer that he suffered a “catastrophic injury” and the injury occurred “during the investigation of a criminal act” which entitled him to benefits under PSEBA.

# Questions?

---