



ILLINOIS PUBLIC PENSION ADVISORY COMMITTEE

New Police Pension Laws in 2019

Policemen will feel Springfield's 2017 amendments to Article 3 of the pension code in 2019.



Governor Rauner signed HB 418 on August 24, 2017, after its sponsor, Rep. Grant Wehrli, engaged in negotiations with the Illinois Chiefs for three years on variations of this bill. It is now [Public Act 100-0281](#).

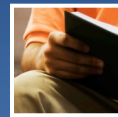
It affects police pensions, and there continues to be questions about exactly what this law does and what will happen when the changes take effect on January 1, 2019.

WINTER 2018

Articles



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About IPAAC (Illinois Public Pension Advisory Committee)

IPPAC (Illinois Public Pension Advisory Committee) is an Illinois Not for Profit Organization that was created by concerned Illinois Police and Fire Pension Fund Trustees who wanted to know and be informed about all issues affecting public pension funds in Illinois. Our mission is: To provide a forum to educate its members on a continuing basis about legal issues and governmental regulations. To work

closely with The Illinois Department of Insurance to ensure members receive the most current information available about their pension funds. To provide experienced professionals that will act as the educating arm of IPPAC by giving presentation and seminars in a timely fashion. To be available to all IPPAC members to answer questions. Please visit us at: www.realippac.com – for more information.

Biography: Attorney Cary J. Collins

Cary J. Collins is an attorney who has specialized in pension law for over 30 years. Opening his general practice in 1985, Cary has concentrated in the area of Police and Fire Pension Law, Administrative Law and Municipal Law. He currently is the Legal Counsel to the Illinois Public Pension Advisory Committee, and an Appointee of the Illinois Department of Insurance Pension Advisory Service Committee, and has also served on the Hoffman Estates Police and Fire Commission. As the former President of the Hoffman Estates Fire Protection District, Cary has a unique insight and passion for, the well-being of fire-fighters and their families. Sharing his knowledge and experience, Cary has been a keynote speaker at many events including the National Fire and Police Pension Fund Association, and the Conference of the Illinois Police

Pension Fund Association. In an effort to better educate and serve pension boards and their trustees, Cary has authored and continues to contribute to legal writings in the field of pension policies and procedures, with a focus on issues relating to Police and Fire pensions. Throughout his many years of practice in the field, Cary has earned a reputation for honesty and fair dealings, and was appointed by the Governor to serve on the Judicial Inquiry Board for the State of Illinois, a body entrusted with overseeing and investigating the conduct of judges on the bench in the Illinois courts. Attorney Collins has spent his career as a legal advocate for public pension funds and representing the interests of pension boards and their trustees.



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Illinois Constitution: Protection for Pension Rights and Benefits



Cary J. Collins – A legal advocate for public pension funds

Illinois Constitution 1970, Article XIII, Section 5. Pension and Retirement Rights.

“Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

The “Wehrli bill” and Its Amendments to the Illinois Pension Code 40 ILCS 5/3 et. seq.



An inside look at the inside of the Illinois Senate seats

The house bill, HB 418, proposed by Rep. Grant Wehrli was signed into law by the Governor and became Public Act 100-0281. The “Wehrli bill” amended three (3) sections of the Illinois Pension Code 40 ILCS 5/3 et. seq. and adds one (1) new section.

The following were amended:

- i. 40 ILCS 5/3-109.1
- ii. 40 ILCS 5/3-124.1
- iii. 40 ILCS 7/109

And, a new section was added:

- i. 40 ILCS 5/3-109.4

The new section 40 ILCS 5/3-109.4 is appropriately titled “Defined contribution plan for certain police officers.” It creates a new type of retirement savings plan for police officers.

Prior to enactment of this new section, a full time policeman (in municipalities of 500,000 and under) could only participate in one type of employer sponsored retirement savings plan. The only option available to many police officers saving for retirement was the Article 3, Police

Pension Fund, established by a municipality under Illinois law. Here, the only alternative for retirement savings with the Article 3, Police Pension was for “any police officer who fails to pay the contributions required [under Article 3]” and become an “excluded person” under § 3-109(b). By not contributing to the police pension fund, the police officer could take the money he would otherwise be required to contribute to the police pension fund, (which would 9% of the officer’s salary per § 3-125.1), create a private account with a private bank and save that money for retirement. However, if the officer did not contribute to the pension fund, than the officer was “excluded” from all other pension benefits including: On and Off Duty Disability (§ 3-114.1 & 114.2), and Surviving Spouse/Children and Dependents (§ 3-121 & 122). Further, if the officer created a private retirement savings account the officer would neither be entitled to, nor receive, any employer contributions to that account. Whereas, municipalities levy taxes under §3-125 Financing, that act similar to “employer contributions” in a private sector retirement savings account; which can be used to cover the cost of bank/account expenses or added to the account’s principal balance. Lastly, without participating in the police pension fund, the officer would be solely liable for the account’s performance and all other risks inherent in the financial market.

40 ILCS 5/3-109.1

(40 ILCS 5/3-109.1)(from Ch. 108 1/2, par. 3-109.1)

Sec. 3-109.1. Chief of police.

(a) Except as provided in subsection (a-5), beginning Beginning January 1, 1990, any person who is employed as the chief of police of a "participating municipality" as defined in Section 7-106 of this Code, may elect to participate in the Illinois Municipal Retirement Fund rather than in a fund created under this Article 3. Except as provided in subsection(b), this election shall be irrevocable, and shall be filed in writing with the Board of the Illinois Municipal Retirement Fund.

(a-5) On or after January 1, 2019, a person may not elect to participate in the Illinois Municipal Retirement Fund with respect to his or her employment as the chief of police of a participating municipality, unless that person became a participating employee in the Illinois Municipal Retirement Fund before January 1, 2019.

(b) Until January 1, 1999, a chief of police who has elected under this Section to participate in IMRF rather than a fund created under this Article may elect to rescind that election and transfer his or her participation to the police pension fund established under this Article by the employing municipality. The chief must notify the boards of trustees of both funds in writing of his or her decision to rescind the election and transfer participation. A chief of police who transfers participation under this subsection (b) shall not be deemed ineligible to participate in the police pension fund by reason of having failed to apply within the 3-month period specified in Section 3-106.

(Source: P.A. 90-460, eff. 8-17-97.)

Under the "Old" system

In the previous scheme, the legislature allowed a police chief to participate in IMRF, rather than the Article 3, Police Pension Fund.

Just like the new "(a-5)" section,, § 3-109.3 contained timing provisions. Beginning in 1990 , section (a) allowed police chief's to participate in IMRF. This means before 1990, Police chiefs were not able to join IMRF. However, the IMRF election was irrevocable unless the chief rescinded the IMRF election and transferred back to the Police Pension Fund before 1999, as required by section (b).

Now... with the "New" law.

Now, (a-5) has been added to §3-109.3. It is a "sunset clause" that will put an end to a Chief's ability to participate in the IMRF .

The new section (a-5) , is as straightforward, "after January 1, 2019," a police chief "may not participate in IMRF." Thus, any chief who wants to participate in IMRF instead of their Police Pension Fund, must join IMRF before January 1, 2019. This election would be irrevocable.

The new section (a-5) was added in an odd location between sub-sections (a) and (b). It would make more sense to have added the new section as "(c)" so the statute would read:

- (a) Starting in 1990, Chiefs can join IMRF but election is irrevocable, unless (b)
- (b) Any Chief who joined IMRF has until 1999 to switch back to their Article 3 Fund.
- (c) After 2019, police chiefs can no long join IMRF.

40 ILCS 5/3-109.4

(40 ILCS 5/3-109.4 new)

Sec. 3-109.4. Defined contribution plan for certain police officers.

(a) Each municipality shall establish a defined contribution plan that aggregates police officer and employer contributions in individual accounts used for retirement. The defined contribution plan, including both police officer and employer contributions, established by the municipality must, at a minimum: meet the safe harbor provisions of the Internal Revenue Code of 1986, as amended; be a qualified plan under the Internal Revenue Code of 1986, as amended; and comply with all other applicable laws, rules, and regulations. Contributions shall vest immediately upon deposit in the police officer's account.

A police officer who participates in the defined contribution plan under this Section may not earn creditable service or otherwise participate in the defined benefit plan offered by his or her employing municipality, except as an annuitant in another fund or as a survivor, while he or she is a participant in the defined contribution plan. The defined contribution plan under this Section shall not be construed to be a pension, annuity, or other defined benefit under this Code.

(b) If a police officer who has more than 10 years of creditable service in a fund enters active service with a different municipality, he or she may elect to participate in the defined contribution plan under this Section in lieu of the defined benefit plan.

A police officer who has elected under this subsection to participate in the defined contribution plan may, in writing, rescind that election in accordance with the rules of the board. Any employer contributions, and the earnings thereon, shall remain vested in the police officer's account. A police officer who rescinds the election may begin participating in the defined benefit plan on the first day of the month following the rescission.

(c) As used in this Section, "defined benefit plan" means the retirement plan available to police officers under this Article who do not participate in the defined contribution plan under this Section.

Under the "Old" system

Prior to the enactment of § 3-109.4, the only employer sponsored retirement savings plan available to police officers, was the Police Pension Fund, established by Illinois law in 40 ILCS 5/3-128, "Article 3."

Now... with the "New" law.

Section 3-109.4 has been added to the Illinois statutes creating a "defined contribution plan" for police officers. Here, the General Assembly has created an alternative to Police Pension Fund, which is a "defined benefit" type plan. Presumably, the General Assembly has used the terms "defined contribution plan" and "defined benefit plan" to be consistent with their meaning in the IRS code.

Rule 401 is the IRS rule for qualified retirement savings plan. This rule discusses the taxation of employer funded retirement plans wherein a trust fund account is created to hold funds for future payments to retired employees.

i. Defined Benefit Plan (DB Plan)

In rule 401, a "defined benefit plan" is a plan where the employer accepts the risk of managing the trust so that the funds set aside in the trust account will pay for the full amount to which the employee is entitled to receive upon retirement. Usually, the employees entitlement is based on years of service and level of compensation. Here, the "benefit" or retirement payments are "defined" because they are based on a

[Sect. 3-109.4, cont. from pg. 5.] retirement. formula, which is known to the employee before retirement, and cannot be changed during

ii. Defined Contribution Plan (DC Plan)

Next, a “defined contribution plan” is an investment trust account where employee and/or employer contributions can be invested, and the risk of loss is on the employee. In the IRS code, a “401(k)” is a type of defined contribution plan. In

this plan, retirement payments are “defined” by the “contributions” made by the employee and employer, into the account. Upon retirement (or certain other events) the employee is only entitled to as much money as is represented in the account, which includes the value of its investments.

Thus, the new section 3-109.4 provides police officers with an option to participate in a 401(k) type retirement savings plan, instead of the police pension fund in Article 3.

40 ILCS 5/3-124.1

(40 ILCS 5/3-124.1) (from Ch. 108 1/2, par. 3-124.1)

Sec. 3-124.1. Re-entry into active service.

(a) If a police officer who is receiving pension payments other than as provided in Section 3-109.3 re-enters active service, pension payment shall be suspended while he or she is in service. When he or she again retires, pension payments shall be resumed. If the police officer remains in service after re-entry for a period of less than 5 years, the pension shall be the same as upon first retirement. If the officer's service after re-entry is at least 5 years and the officer makes the required contributions during the period of re-entry, his or her pension shall be recomputed by taking into account the additional period of service and salary.

(b) If a police officer who first becomes a member on or after January 1, 2019 is receiving pension payments (other than as provided in Section 3-109.3) and re-enters active service with any municipality that has established a pension fund under this Article, that police officer may continue to receive pension payments while he or she is in active service, but shall only participate in a defined contribution plan established by the municipality pursuant to Section 3-109.4 and may not establish creditable service in the pension fund established by that municipality or have his or her pension recomputed.

(Source: P.A. 91-939, eff. 2-1-01.)

Under the “Old” system

Previously, a retired police officer was able to return to service after officially retiring from the department and receiving retirement benefits from the pension fund. Further, if the retired officer re-entered service and met the requirements of § 3-124.1, the officer's pension payments could increase (for the second retirement) because this statute allowed the officer's pension payments, to be recomputed if the officer:

1. remained on active duty for 5 + years
2. made the required fund contributions
3. did not receive pension benefits while serving on active duty.

Now... with the “New” law. With the new law, after January 1, 2019, a retired officer can no longer increase his pension payments based on additional service by re-entering active duty and following the requirements of § 3-124.1(a).

However, now, if a retired officer re-enters active service the officer can:

1. collect pension payments during active service
2. participate in the newly created defined contribution plan created by sections § 3-109.3 and 3-109.4.

40 ILCS 5/7-109. IMRF Employee.

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

(1) "Employee" means any person who:

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

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or any instrumentality thereof, or a participating instrumentality, including aldermen, county supervisors and other persons (excepting those employed as independent contractors) who are paid compensation, fees, allowances or other emolument for official duties, and, in counties, the several county fee offices.

(b) Serves as a township treasurer appointed under the School Code, as heretofore or hereafter amended, and who receives for such services regular compensation as distinguished from per diem compensation, and any regular employee in the office of any township treasurer whether or not his earnings are paid from the income of the permanent township fund or from funds subject to distribution to the is the chief executive officer, chief educational officer, chief fiscal officer, or other employee of a Financial School Code, other than a superintendent or certified school business official, except that such person shall not be treated as an employee under this Section if that person has negotiated with the Financial Oversight Panel, in conjunction with the school district, a contractual agreement for exclusion from this Section.

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

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

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

1. "An Act in relation to an Illinois State Teachers' Pension and Retirement Fund", approved May 27, 1915, as amended;

2. Articles 15 and 16 of this Code.

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

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

(b) Are designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties, except that when such persons are the heads of the police or fire department and are not eligible to be included within any such pension fund, they shall be included within this Article; provided, that such persons shall not be excluded to the extent of concurrent service and earnings not designated as being for police or fire protection duties. However, (i) any head of a police department who was a participant under this Article immediately before October 1, 1977 and did not elect, under Section 3-109 of this Act, to participate in a police pension fund shall be an "employee", and (ii) any chief of police who became a participating employee under this Article before January 1, 2019 and who elects to participate in this Fund under

Section 3-109.1 of this Code, regardless of whether such person continues to be employed as chief of police or is employed in some other rank or capacity within the police department, shall be an employee under this Article for so long as such person is employed to perform police duties by a participating municipality and has not lawfully rescinded that election.

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

(d) Become an employee of any of the following participating instrumentalities on or after the effective date of this amendatory Act of the 99th General Assembly: the Illinois Municipal League; the Illinois Association of Park Districts; the Illinois Supervisors, County Commissioners and Superintendents of Highways Association; an association, or not-for-profit corporation, membership in which is authorized under Section 85-15 of the Township Code; the United Counties Council; or the Will County Governmental League.

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from general or special funds of a county for performance of personal services or official duties within the territorial limits of the county, are employees of the county (unless excluded by subsection (2) of this Section) notwithstanding that they may be appointed by and are subject to the direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the

county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. This finding and this amendatory Act shall apply to all such employees from the date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund.

(Source: P.A. 98-712, eff. 7-16-14; 99-830, eff. 1-1-17.)

Under the "Old" system

Before, a police chief could elect to participate in the Article 7, Illinois Municipal Retirement Fund, instead of the Article 3, the Police Pension Fund because the old § 3-109.1, allowed a chief to do so.

Now... with the "New" law.

The new section, § 3-109.1(a-5), added to Article 3, Police Pension Fund prevents any police chiefs from joining IMRF after January 1, 2019. The new language added to Article 7, § 7-109 requires any police chief electing to participate in IMRF to do so before January 1, 2019. Essentially, the amendments to § 7-109, reinforce the § 3-109.1(a-5) amendments, and both act to prevent chiefs from joining IMRF.

Commentary On the New Police Pension Fund Legislation



The defined contribution plan for police officers created by 40 ILCS 5/3-109.4, in this new legislation, could present constitutional problems in the future. The defined contribution plans in this section are to be established by the municipalities, and thus each individual plan as applied by the municipality will be subject to judicial scrutiny. Further, the defined contribution plan seems exclude other sections of the pension code could be construed as violating other provisions of the pension code and/or the Illinois Constitution. Lastly, the texts of § 5/3-109.4 may be unconstitutional on its face because it attempts evade the protections of the Illinois by declaring the plan should “not be construed to be a pension.” With the separation of powers, it is the job of the courts to interpret the laws, and the legislature may have overstepped their power by declaring that a section of the pension code, should “not be construed to be a pension.”

The first issues is whether the Wehrli amendments will pass constitutional muster. The rule of law provided in Article XIII, section 5, of the Illinois Constitution states “Membership in any pension or retirement system of the State... shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.” In section 5/3-109.4, the statute mandates “Each municipality shall establish a defined contribution plan.” The remainder of the section provides guidelines for establishing permissible plans. Since each municipality can interpret the guideline differently, there is a possibility that some plans will be unconstitutional as applied by the municipality.

The second issue is whether other sections of Article III will apply when the § 5/3-109.4, defined contribution plans, are established in that same Article.

The rule provided by the court is that “Provisions of a pension plan, or any other act, are to be examined in their entirety to determine the legislative intent.” *Board of Trustees of Policemen’s Pension Fund of Village of Oak Brook v. Illinois Dept. of Ins., 1976, 1 Ill. Dec. 171.* In § 3-109.4, the text states “A police officer who participates in the defined contribution plan under this Section may not...otherwise participate in the defined benefit plan...” Subsection (c) then says “As used in this section, “defined benefit plan” means the retirement plan available to police officers under this Article who do not participate in the defined contribution plan under this Section.” So does this mean that the other sections of Article III do not apply to an officer who participates in a § 3-109.4 defined contribution plan, which is, but a single section of Article III? Thus, it seems unworkable to participate in a retirement savings plan under one section of Article III, but prohibit the participation in any other section of Article III.

The next issue is whether § 5/3-109.4 is constitutional on its face. The rule of law is, “In construing the Policeman’s Pension Fund Act, it is duty of court to enforce the pension law as enacted, according to its plain and unmistakable provisions.” *Edwards v. Board of Trustees of Police Pension Fund of City of Marion, Williamson County, 1974, 22 Ill. App. 3d 260.* In subsection (a), it says “The defined contribution plan under this section shall not be construed to be a pension, annuity, or other defined benefit under this code.” Further, despite the fact this section is in Article III and clearly intended by the legislature to affect the Police Pension Fund established by Article III, the plain language of section 5/3-109.4 prohibits the defined contribution plan described in that section from being construed as a pension. Therefore, this law on its face, attempts to impair the membership in the Article III Police Pension Fund from construing a section in Article III, as a “pension” so that it falls outside the pensions protected by Illinois Constitution.

2018 Continuing Education and Ethics Training for Pension Trustees



IPPAC provides training that complies with the with 40 ILCS 5/1-109.3, which mandates 32 hours of training for initial trustee certification, and 40 ILCS 5/1-113.18 which requires 8 hours of ethics training per year. Continuing education and ethics training for pension trustees were held on August 23-24, at the Hometown Nation Bank, 260 Bucklin Street, LaSalle, IL; and on September 25 - 26, at the Village of Schaumburg Police Department, 1000 Schaumburg Road, Schaumburg, IL.

Both events had a great turn out. Certificates were given to all participants who completed the training at the conclusion of the event. IPPAC thanks all those who attended the conferences, as well as, all our guest lectures and supporters including:

- John Mitchell, Mitchell, Vaught & Taylor, Inc.
- Michael Moirano, Moirano, Gorman, Kenny, LLC
- Hon. Anthony A. Losco
- Tom Radja Collins & Radja
- Kelly Weller, Great Lakes Advisors, LLC
- Barbara J. Utterback, Lauterbach & Amen, LLP.
- A.J. Weber, Lauterbach & Amen, LLP.
- Allie Rysell, Lauterbach & Amen, LLP.
- Steve Calcaterra, Collins & Radja
- Bill Yocius
- David A. Mejia
- Sue Collins
- Libby Collins
- Cary J. Collins, Collins & Radja

Visit us online @ www.realippac.com/upcoming-events and keep updated on all future training sessions, seminars and conferences.

REGISTER

NOW!

IPPAC's

WINTER SEMINAR

WHEN:

Friday, November 30, 2019

WHERE:

**Bridges of Polar Creek Country Club
1400 Poplar Creek Dr.
Hoffman Estates, IL
60169**

TIME:

**8:30 am - Registration
9:00 am - Session Start
5:00 pm - Seminar Ends**

Attendees will receive a certificate for 8 hours of continuing education required by 40 ILCS 5/1-109.3(b).

The cost is \$50 for IPPAC members and \$100 for Non-IPPAC members.

Visit us @ www.realippac.com - for more information.

Pending Litigation: Ex-spouse attempts to vacate divorce and receive survivor benefits from the pension fund.

In what looks to be a case of the time they were married. After the first impression in Illinois, Senior divorce was finalized, the Partner and Chief Litigator at Collins & Radja, Steve Calcaterra, is representing the interests of the pension board and pension fund. In this case currently pending in litigation, a firefighter and firefighter was still working and not spouse had gone through a bitter divorce. Both were represented by attorneys. After a drawn out court battle, a final divorce decree was entered which included an Illinois Qualified Domestic Relations Order. The QILDRO entitled the ex-spouse to a percentage of pension payments during the firefighter's life in retirement. The pension is considered marital property and the ex-spouse was awarded 50% of the pension for

Now the ex-spouse has initiated court proceedings and is attempting to vacate the dissolution of marriage, duly entered by the court before the pensioner's death. The ex-spouse seeks survivor benefits which would require the pension fund to pay out money over



the ex-spouses lifetime. The dispute is on-going and additional court dates are upcoming.

Special thanks to the Illinois Association of Chiefs of Police, Executive Director Ed Wojcicki, Sue Collins, Allison Barrett, CPA and our friends at Lauterbach & Amen, LLP.

IPPAC

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