

# HB6188



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB6188**

by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

40 ILCS 5/7-139

from Ch. 108 1/2, par. 7-139

40 ILCS 5/8-226.7 rep.

Amends the Illinois Municipal Retirement Fund (IMRF) Article of the Illinois Pension Code. Repeals and declares void ab initio a provision added to the Code by Public Act 95-504. Makes related changes. Effective immediately.

LRB097 21821 JDS 70455 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 1. Retroactive repeal. This amendatory Act of the  
5 97th General Assembly hereby repeals and declares void ab  
6 initio Section 8-226.7 of the Illinois Pension Code as  
7 contained in Section 5 of Public Act 95-504 as that Section  
8 furnishes no vested rights because it violates multiple  
9 provisions of the 1970 Illinois Constitution, including, but  
10 not limited to, Article VIII, Section 1 and Article IV, Section  
11 13. Upon receipt of an application within 6 months after the  
12 effective date of this amendatory Act of the 97th General  
13 Assembly, the System shall immediately refund any  
14 contributions made by or on behalf of a person to receive  
15 service credit pursuant to the text set forth in said Section  
16 8-226.7, as well as any amount determined by the Board to be  
17 equal to the investment earned by the System on those  
18 contributions since their receipt.

19 Section 2. The Illinois Pension Code is amended by changing  
20 Section 7-139 as follows:

21 (40 ILCS 5/7-139) (from Ch. 108 1/2, par. 7-139)

22 Sec. 7-139. Credits and creditable service to employees.

1 (a) Each participating employee shall be granted credits  
2 and creditable service, for purposes of determining the amount  
3 of any annuity or benefit to which he or a beneficiary is  
4 entitled, as follows:

5 1. For prior service: Each participating employee who  
6 is an employee of a participating municipality or  
7 participating instrumentality on the effective date shall  
8 be granted creditable service, but no credits under  
9 paragraph 2 of this subsection (a), for periods of prior  
10 service for which credit has not been received under any  
11 other pension fund or retirement system established under  
12 this Code, as follows:

13 If the effective date of participation for the  
14 participating municipality or participating  
15 instrumentality is on or before January 1, 1998, creditable  
16 service shall be granted for the entire period of prior  
17 service with that employer without any employee  
18 contribution.

19 If the effective date of participation for the  
20 participating municipality or participating  
21 instrumentality is after January 1, 1998, creditable  
22 service shall be granted for the last 20% of the period of  
23 prior service with that employer, but no more than 5 years,  
24 without any employee contribution. A participating  
25 employee may establish creditable service for the  
26 remainder of the period of prior service with that employer

1 by making an application in writing, accompanied by payment  
2 of an employee contribution in an amount determined by the  
3 Fund, based on the employee contribution rates in effect at  
4 the time of application for the creditable service and the  
5 employee's salary rate on the effective date of  
6 participation for that employer, plus interest at the  
7 effective rate from the date of the prior service to the  
8 date of payment. Application for this creditable service  
9 may be made at any time while the employee is still in  
10 service.

11 A municipality that (i) has at least 35 employees; (ii)  
12 is located in a county with at least 2,000,000 inhabitants;  
13 and (iii) maintains an independent defined benefit pension  
14 plan for the benefit of its eligible employees may restrict  
15 creditable service in whole or in part for periods of prior  
16 service with the employer if the governing body of the  
17 municipality adopts an irrevocable resolution to restrict  
18 that creditable service and files the resolution with the  
19 board before the municipality's effective date of  
20 participation.

21 Any person who has withdrawn from the service of a  
22 participating municipality or participating  
23 instrumentality prior to the effective date, who reenters  
24 the service of the same municipality or participating  
25 instrumentality after the effective date and becomes a  
26 participating employee is entitled to creditable service

1 for prior service as otherwise provided in this subdivision  
2 (a)(1) only if he or she renders 2 years of service as a  
3 participating employee after the effective date.  
4 Application for such service must be made while in a  
5 participating status. The salary rate to be used in the  
6 calculation of the required employee contribution, if any,  
7 shall be the employee's salary rate at the time of first  
8 reentering service with the employer after the employer's  
9 effective date of participation.

10 2. For current service, each participating employee  
11 shall be credited with:

12 a. Additional credits of amounts equal to each  
13 payment of additional contributions received from him  
14 under Section 7-173, as of the date the corresponding  
15 payment of earnings is payable to him.

16 b. Normal credits of amounts equal to each payment  
17 of normal contributions received from him, as of the  
18 date the corresponding payment of earnings is payable  
19 to him, and normal contributions made for the purpose  
20 of establishing out-of-state service credits as  
21 permitted under the conditions set forth in paragraph 6  
22 of this subsection (a).

23 c. Municipality credits in an amount equal to 1.4  
24 times the normal credits, except those established by  
25 out-of-state service credits, as of the date of  
26 computation of any benefit if these credits would

1 increase the benefit.

2 d. Survivor credits equal to each payment of  
3 survivor contributions received from the participating  
4 employee as of the date the corresponding payment of  
5 earnings is payable, and survivor contributions made  
6 for the purpose of establishing out-of-state service  
7 credits.

8 3. For periods of temporary and total and permanent  
9 disability benefits, each employee receiving disability  
10 benefits shall be granted creditable service for the period  
11 during which disability benefits are payable. Normal and  
12 survivor credits, based upon the rate of earnings applied  
13 for disability benefits, shall also be granted if such  
14 credits would result in a higher benefit to any such  
15 employee or his beneficiary.

16 4. For authorized leave of absence without pay: A  
17 participating employee shall be granted credits and  
18 creditable service for periods of authorized leave of  
19 absence without pay under the following conditions:

20 a. An application for credits and creditable  
21 service is submitted to the board while the employee is  
22 in a status of active employment.

23 b. Not more than 12 complete months of creditable  
24 service for authorized leave of absence without pay  
25 shall be counted for purposes of determining any  
26 benefits payable under this Article.

1           c. Credits and creditable service shall be granted  
2           for leave of absence only if such leave is approved by  
3           the governing body of the municipality, including  
4           approval of the estimated cost thereof to the  
5           municipality as determined by the fund, and employee  
6           contributions, plus interest at the effective rate  
7           applicable for each year from the end of the period of  
8           leave to date of payment, have been paid to the fund in  
9           accordance with Section 7-173. The contributions shall  
10          be computed upon the assumption earnings continued  
11          during the period of leave at the rate in effect when  
12          the leave began.

13          d. Benefits under the provisions of Sections  
14          7-141, 7-146, 7-150 and 7-163 shall become payable to  
15          employees on authorized leave of absence, or their  
16          designated beneficiary, only if such leave of absence  
17          is creditable hereunder, and if the employee has at  
18          least one year of creditable service other than the  
19          service granted for leave of absence. Any employee  
20          contributions due may be deducted from any benefits  
21          payable.

22          e. No credits or creditable service shall be  
23          allowed for leave of absence without pay during any  
24          period of prior service.

25          5. For military service: The governing body of a  
26          municipality or participating instrumentality may elect to

1 allow creditable service to participating employees who  
2 leave their employment to serve in the armed forces of the  
3 United States for all periods of such service, provided  
4 that the person returns to active employment within 90 days  
5 after completion of full time active duty, but no  
6 creditable service shall be allowed such person for any  
7 period that can be used in the computation of a pension or  
8 any other pay or benefit, other than pay for active duty,  
9 for service in any branch of the armed forces of the United  
10 States. If necessary to the computation of any benefit, the  
11 board shall establish municipality credits for  
12 participating employees under this paragraph on the  
13 assumption that the employee received earnings at the rate  
14 received at the time he left the employment to enter the  
15 armed forces. A participating employee in the armed forces  
16 shall not be considered an employee during such period of  
17 service and no additional death and no disability benefits  
18 are payable for death or disability during such period.

19 Any participating employee who left his employment  
20 with a municipality or participating instrumentality to  
21 serve in the armed forces of the United States and who  
22 again became a participating employee within 90 days after  
23 completion of full time active duty by entering the service  
24 of a different municipality or participating  
25 instrumentality, which has elected to allow creditable  
26 service for periods of military service under the preceding



1 paragraph, shall also be allowed creditable service for his  
2 period of military service on the same terms that would  
3 apply if he had been employed, before entering military  
4 service, by the municipality or instrumentality which  
5 employed him after he left the military service and the  
6 employer costs arising in relation to such grant of  
7 creditable service shall be charged to and paid by that  
8 municipality or instrumentality.

9 Notwithstanding the foregoing, any participating  
10 employee shall be entitled to creditable service as  
11 required by any federal law relating to re-employment  
12 rights of persons who served in the United States Armed  
13 Services. Such creditable service shall be granted upon  
14 payment by the member of an amount equal to the employee  
15 contributions which would have been required had the  
16 employee continued in service at the same rate of earnings  
17 during the military leave period, plus interest at the  
18 effective rate.

19 5.1. In addition to any creditable service established  
20 under paragraph 5 of this subsection (a), creditable  
21 service may be granted for up to 48 months of service in  
22 the armed forces of the United States.

23 In order to receive creditable service for military  
24 service under this paragraph 5.1, a participating employee  
25 must (1) apply to the Fund in writing and provide evidence  
26 of the military service that is satisfactory to the Board;

1 (2) obtain the written approval of the current employer;  
2 and (3) make contributions to the Fund equal to (i) the  
3 employee contributions that would have been required had  
4 the service been rendered as a member, plus (ii) an amount  
5 determined by the board to be equal to the employer's  
6 normal cost of the benefits accrued for that military  
7 service, plus (iii) interest on items (i) and (ii) from the  
8 date of first membership in the Fund to the date of  
9 payment. The required interest shall be calculated at the  
10 regular interest rate.

11 The changes made to this paragraph 5.1 by Public Acts  
12 95-483 and 95-486 apply only to participating employees in  
13 service on or after August 28, 2007 (the effective date of  
14 those Public Acts).

15 6. For out-of-state service: Creditable service shall  
16 be granted for service rendered to an out-of-state local  
17 governmental body under the following conditions: The  
18 employee had participated and has irrevocably forfeited  
19 all rights to benefits in the out-of-state public employees  
20 pension system; the governing body of his participating  
21 municipality or instrumentality authorizes the employee to  
22 establish such service; the employee has 2 years current  
23 service with this municipality or participating  
24 instrumentality; the employee makes a payment of  
25 contributions, which shall be computed at 8% (normal) plus  
26 2% (survivor) times length of service purchased times the

1 average rate of earnings for the first 2 years of service  
2 with the municipality or participating instrumentality  
3 whose governing body authorizes the service established  
4 plus interest at the effective rate on the date such  
5 credits are established, payable from the date the employee  
6 completes the required 2 years of current service to date  
7 of payment. In no case shall more than 120 months of  
8 creditable service be granted under this provision.

9 7. For retroactive service: Any employee who could have  
10 but did not elect to become a participating employee, or  
11 who should have been a participant in the Municipal Public  
12 Utilities Annuity and Benefit Fund before that fund was  
13 superseded, may receive creditable service for the period  
14 of service not to exceed 50 months; however, a current or  
15 former elected or appointed official of a participating  
16 municipality may establish credit under this paragraph 7  
17 for more than 50 months of service as an official of that  
18 municipality, if the excess over 50 months is approved by  
19 resolution of the governing body of the affected  
20 municipality filed with the Fund before January 1, 2002.

21 Any employee who is a participating employee on or  
22 after September 24, 1981 and who was excluded from  
23 participation by the age restrictions removed by Public Act  
24 82-596 may receive creditable service for the period, on or  
25 after January 1, 1979, excluded by the age restriction and,  
26 in addition, if the governing body of the participating

1 municipality or participating instrumentality elects to  
2 allow creditable service for all employees excluded by the  
3 age restriction prior to January 1, 1979, for service  
4 during the period prior to that date excluded by the age  
5 restriction. Any employee who was excluded from  
6 participation by the age restriction removed by Public Act  
7 82-596 and who is not a participating employee on or after  
8 September 24, 1981 may receive creditable service for  
9 service after January 1, 1979. Creditable service under  
10 this paragraph shall be granted upon payment of the  
11 employee contributions which would have been required had  
12 he participated, with interest at the effective rate for  
13 each year from the end of the period of service established  
14 to date of payment.

15 8. For accumulated unused sick leave: A participating  
16 employee who is applying for a retirement annuity shall be  
17 entitled to creditable service for that portion of the  
18 employee's accumulated unused sick leave for which payment  
19 is not received, as follows:

20 a. Sick leave days shall be limited to those  
21 accumulated under a sick leave plan established by a  
22 participating municipality or participating  
23 instrumentality which is available to all employees or  
24 a class of employees.

25 b. Except as provided in item b-1, only sick leave  
26 days accumulated with a participating municipality or

1 participating instrumentality with which the employee  
2 was in service within 60 days of the effective date of  
3 his retirement annuity shall be credited; If the  
4 employee was in service with more than one employer  
5 during this period only the sick leave days with the  
6 employer with which the employee has the greatest  
7 number of unpaid sick leave days shall be considered.

8 b-1. If the employee was in the service of more  
9 than one employer as defined in item (2) of paragraph  
10 (a) of subsection (A) of Section 7-132, then the sick  
11 leave days from all such employers shall be credited,  
12 as long as the creditable service attributed to those  
13 sick leave days does not exceed the limitation in item  
14 f of this paragraph 8. In calculating the creditable  
15 service under this item b-1, the sick leave days from  
16 the last employer shall be considered first, then the  
17 remaining sick leave days shall be considered until  
18 there are no more days or the maximum creditable sick  
19 leave threshold under item f of this paragraph 8 has  
20 been reached.

21 c. The creditable service granted shall be  
22 considered solely for the purpose of computing the  
23 amount of the retirement annuity and shall not be used  
24 to establish any minimum service period required by any  
25 provision of the Illinois Pension Code, the effective  
26 date of the retirement annuity, or the final rate of

1 earnings.

2 d. The creditable service shall be at the rate of  
3 1/20 of a month for each full sick day, provided that  
4 no more than 12 months may be credited under this  
5 subdivision 8.

6 e. Employee contributions shall not be required  
7 for creditable service under this subdivision 8.

8 f. Each participating municipality and  
9 participating instrumentality with which an employee  
10 has service within 60 days of the effective date of his  
11 retirement annuity shall certify to the board the  
12 number of accumulated unpaid sick leave days credited  
13 to the employee at the time of termination of service.

14 9. For service transferred from another system:  
15 Credits and creditable service shall be granted for service  
16 under Article 3, 4, 5, ~~8~~ 14, or 16 of this Act, to any  
17 active member of this Fund, and to any inactive member who  
18 has been a county sheriff, upon transfer of such credits  
19 pursuant to Section 3-110.3, 4-108.3, 5-235, ~~8-226.7,~~  
20 14-105.6, or 16-131.4, and payment by the member of the  
21 amount by which (1) the employer and employee contributions  
22 that would have been required if he had participated in  
23 this Fund as a sheriff's law enforcement employee during  
24 the period for which credit is being transferred, plus  
25 interest thereon at the effective rate for each year,  
26 compounded annually, from the date of termination of the

1 service for which credit is being transferred to the date  
2 of payment, exceeds (2) the amount actually transferred to  
3 the Fund. Such transferred service shall be deemed to be  
4 service as a sheriff's law enforcement employee for the  
5 purposes of Section 7-142.1.

6 10. For service transferred from an Article 3 system  
7 under Section 3-110.8: Credits and creditable service  
8 shall be granted for service under Article 3 of this Act as  
9 provided in Section 3-110.8, to any active member of this  
10 Fund upon transfer of such credits pursuant to Section  
11 3-110.8. If the amount by which (1) the employer and  
12 employee contributions that would have been required if he  
13 had participated in this Fund during the period for which  
14 credit is being transferred, plus interest thereon at the  
15 effective rate for each year, compounded annually, from the  
16 date of termination of the service for which credit is  
17 being transferred to the date of payment, exceeds (2) the  
18 amount actually transferred to the Fund, then the amount of  
19 creditable service established under this paragraph 10  
20 shall be reduced by a corresponding amount in accordance  
21 with the rules and procedures established under this  
22 paragraph 10.

23 The board shall establish by rule the manner of making  
24 the calculation required under this paragraph 10, taking  
25 into account the appropriate actuarial assumptions; the  
26 member's service, age, and salary history; the level of

1 funding of the employer; and any other factors that the  
2 board determines to be relevant.

3 Until January 1, 2010, members who transferred service  
4 from an Article 3 system under the provisions of Public Act  
5 94-356 may establish additional credit in this Fund, but  
6 only up to the amount of the service credit reduction in  
7 that transfer, as calculated under the actuarial  
8 assumptions. This credit may be established upon payment by  
9 the member of an amount to be determined by the board,  
10 equal to (1) the amount that would have been contributed as  
11 employee and employer contributions had all the service  
12 been as an employee under this Article, plus interest  
13 thereon compounded annually from the date of service to the  
14 date of transfer, less (2) the total amount transferred  
15 from the Article 3 system, plus (3) interest on the  
16 difference at the effective rate for each year, compounded  
17 annually, from the date of the transfer to the date of  
18 payment. The additional service credit is allowed under  
19 this amendatory Act of the 95th General Assembly  
20 notwithstanding the provisions of Article 3 terminating  
21 all transferred credits on the date of transfer.

22 (b) Creditable service - amount:

23 1. One month of creditable service shall be allowed for  
24 each month for which a participating employee made  
25 contributions as required under Section 7-173, or for which  
26 creditable service is otherwise granted hereunder. Not



1 more than 1 month of service shall be credited and counted  
2 for 1 calendar month, and not more than 1 year of service  
3 shall be credited and counted for any calendar year. A  
4 calendar month means a nominal month beginning on the first  
5 day thereof, and a calendar year means a year beginning  
6 January 1 and ending December 31.

7 2. A seasonal employee shall be given 12 months of  
8 creditable service if he renders the number of months of  
9 service normally required by the position in a 12-month  
10 period and he remains in service for the entire 12-month  
11 period. Otherwise a fractional year of service in the  
12 number of months of service rendered shall be credited.

13 3. An intermittent employee shall be given creditable  
14 service for only those months in which a contribution is  
15 made under Section 7-173.

16 (c) No application for correction of credits or creditable  
17 service shall be considered unless the board receives an  
18 application for correction while (1) the applicant is a  
19 participating employee and in active employment with a  
20 participating municipality or instrumentality, or (2) while  
21 the applicant is actively participating in a pension fund or  
22 retirement system which is a participating system under the  
23 Retirement Systems Reciprocal Act. A participating employee or  
24 other applicant shall not be entitled to credits or creditable  
25 service unless the required employee contributions are made in  
26 a lump sum or in installments made in accordance with board

1 rule.

2 (d) Upon the granting of a retirement, surviving spouse or  
3 child annuity, a death benefit or a separation benefit, on  
4 account of any employee, all individual accumulated credits  
5 shall thereupon terminate. Upon the withdrawal of additional  
6 contributions, the credits applicable thereto shall thereupon  
7 terminate. Terminated credits shall not be applied to increase  
8 the benefits any remaining employee would otherwise receive  
9 under this Article.

10 (Source: P.A. 96-299, eff. 8-11-09; 97-415, eff. 8-16-11.)

11 (40 ILCS 5/8-226.7 rep.)

12 Section 3. The Illinois Pension Code is amended by  
13 repealing Section 8-226.7.

14 Section 97. Severability. The provisions of this Act are  
15 severable under Section 1.31 of the Statute on Statutes.

16 Section 99. Effective date. This Act takes effect upon  
17 becoming law.