IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

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CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIVISION
DOROTHY BROWN CLERK

MARY J. JONES, *et al.*	)	
Plaintiffs,	)	Case No. 2014 CH 20027
v.	)	Honorable Rita M. Novak
MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO and BOARD OF TRUSTEES OF THE MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO,	)	
Defendants,	)	
and	)	
CITY OF CHICAGO and STATE OF ILLINOIS,	)	
Intervenor-Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Like Public Act 98-599, just declared unconstitutional by the Illinois Supreme Court, Public Act 98-641 (the "Act") "is merely the latest assault in [an] ongoing political battle against public pension rights." *See In re Pension Reform Litig.*, 2015 IL 118585, ¶ 84. Through the Act, "the General Assembly is attempting to do once again exactly what the people of Illinois, through article XIII, section 5, said it has no authority to do and must not do"—diminish constitutionally-protected pension benefits. *See id.* Because "the General Assembly may not legislate on a subject withdrawn from its authority by the [Illinois] constitution," *id.*, ¶ 85, plaintiffs are entitled to entry of judgment declaring the Act unconstitutional.

The Illinois Supreme Court has removed any remaining shred of doubt as to the viability of the City's and the State's "police powers" defense. *In re Pension Reform Litig.*, 2015 IL 118585, ¶¶ 70-85. With that defense laid to rest, defendants' only argument for the Act's constitutionality is that it provides a "net benefit" to pension system members. Yet the General Assembly lacked any authority whatsoever to pass the Act's pension-diminishing provisions. The legislature cannot manufacture such authority by "netting" those unconstitutional diminishments against purported statutory "benefits"—much less "benefits" in the form of statutorily-prescribed City contribution increases that may be revoked at any politically expedient point in the future. The Pension Protection Clause already mandates, as a constitutional matter, that promised benefits be paid in full when due. The City's and the State's central premise—that pension benefits ultimately "will not be paid" unless they are diminished now—is the very rationale that the Pension Protection Clause was designed to foreclose.

By persisting in their defense of the Act, the City and the State have crossed the line separating zealous advocacy from doublespeak. In Orwellian fashion, the City downplays as

"modest changes" provisions that would "reduce the benefits due and payable to [MEABF members] in a real and absolute way." *See* City TRO Br. at 8[1]; *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 69. Legislation that indisputably reduces promised pension benefits is said to "preserve and protect" those benefits. *See* City TRO Br. at 11; State TRO Br. at 4.

The time has come for the City and the State to stop defending the legally indefensible. All sides agree that the City's pension systems are underfunded. It does a disservice to everyone involved, however, for defendants to continue to pretend that this challenge may be addressed by unconstitutional means. As the Illinois Supreme Court reaffirmed in striking down similar pension "reforms" embodied in Public Act 98-599, "[c]risis is not an excuse to abandon the rule of law. It is a summons to defend it." *In re Pension Reform Litig.*, 2015 IL 11858, ¶ 87.

In the final analysis, the question presented by this case, "whether Public Act 98-[641]'s reduction of retirement annuity benefits violates this State's pension protection clause, is easily resolved." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 45. Because the Act unilaterally diminishes promised pension benefits, it exceeds the General Assembly's constitutional authority and must be struck down.

BACKGROUND

This case presents a facial challenge to the constitutionality of Public Act 98-641. (A copy of the Act is included as Exhibit 1 to this Memorandum.) Introduced as Senate Bill 1922, the Act was intended to address unfunded liabilities of the Municipal Employees' Annuity and Benefit Fund of Chicago ("MEABF") and the Laborers' and Retirement Board Employees' Annuity Fund of Chicago ("LABF"). *See* Pub. Act 98-641, § 1. To that end, the Act amends

[1] The City of Chicago's Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunctive Relief shall be cited as "City TRO Br."; the City's Surreply in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunctive Relief shall be cited as "City TRO Surreply"; and the State of Illinois' Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction shall be cited as "State TRO Br."

certain Pension Code provisions applicable to each Fund, which are governed by Articles 8 and 11 of the Code, respectively. *See generally id.*, § 10.

Plaintiffs in this action (2014 CH 20027) are current and retired City employees who are members of the MEABF, as well as labor unions representing MEABF members.[2] *See* Complaint for Declaratory, Injunctive and Other Relief ("Cmplt.") ¶¶ 11-28; Answer of MEABF to Complaint for Declaratory Judgment ("MEABF Ans.") ¶¶ 11-24 (admitting that individual plaintiffs are MEABF members); City of Chicago's Affirmative Defense to Complaint for Declaratory, Injunctive and Other Relief ("City Ans.") ¶¶ 11-28 (admitting that individual plaintiffs are MEABF members and that labor union plaintiffs represent MEABF members).

The Act's amendments to the Pension Code can be divided into two principal categories: provisions that diminish the pension benefits to which individual members were entitled under the pre-Act Pension Code; and provisions that progressively increase the City's specified contributions to the Funds over time and create mechanisms purportedly designed to enforce those funding requirements.

I. The Act's Pension-Diminishing Provisions

The Act diminishes pension benefits in at least three ways: (a) it reduces members' annual, automatic annuity increases; (b) it eliminates those annuity increases altogether in certain years; and (c) it increases the required pension contributions of current employees.

A. Reductions in Automatic Annuity Increases

Previously, retirees who became MEABF members before January 1, 2011, received an automatic annuity increase of three percent a year, compounded annually. *See* Pub. Act 98-641, § 10 (amending 40 ILCS 5/8-137); *id.* (amending 40 ILCS 5/8-137.1); *id.* (amending 40 ILCS

[2] Because the Act imposes identical pension benefit reductions on LABF members, the claims brought on behalf of MEABF members apply equally to the unconstitutional pension diminishments imposed by the Act on LABF members.

5/11-134.1); *id.* (amending 40 ILCS 5/11-134.3). Under the Act, the automatic annuity increase is equal to the *lesser* of three percent or half the annual unadjusted percentage increase in the Consumer Price Index, without compounding. *See* Pub. Act 98-641, § 10 (amending 40 ILCS 5/8-137 to add new subsection (b-5)(3)); *id.* (amending 40 ILCS 5/8-137.1 to add new subsection (b-5)(2)); *id.* (amending 40 ILCS 5/11-134.1 to add new subsection (b-5)(3)); *id.* (amending 40 ILCS 5/11-134.3 to add new subsection (b-5)(2)); Cmplt. ¶ 40; City Ans. ¶ 40.[3]

B. Elimination of Automatic Annual Annuity Increases

Under the Act, formerly "automatic" annual annuity increases are eliminated entirely in certain years for any retiree with a pension of more than $22,000 per year. Thus:

- Current retirees will receive no annuity increase in 2017, 2019, or 2025. *See* Public Act 98-641, § 10 (amending 40 ILCS 5/8-137 to add new subsection (b-5)(2)); *id.* (amending 5/8-137.1 to add new subsection (b-5)(1)); *id.* (amending 40 ILCS 5/11-134.1 to add new subsection (b-5)(2)); *id.* (amending 40 ILCS 5/11-134.3 to add new subsection (b-5)(1)).

- Upon retirement, current employees who became MEABF members before January 1, 2011, will likewise receive no annuity increases in 2017, 2019, or 2025. *Id.*

- Upon retirement, current employees who became MEABF members after January 1, 2011, will receive no annuity increase in 2025. *Id.* (amending 40 ILCS 5/1-160(e)).

- Employees who retire after the Act's effective date (June 9, 2014) will not receive an annuity increase until one full year after the date on which the employee otherwise would have received an initial annuity increase under the pre-Act Pension Code. *Id.* (amending 40 ILCS 5/8-137 to add subsection (b-5)(1)); *id.* (amending 40 ILCS 5/11-134.1 to add new subsection (b-5)(1)).

C. Increased Employee Contributions

Under the pre-Act Pension Code, current employees were required to contribute 8.5 percent of their salary to the MEABF. *See* Pub. Act 98-641, § 10 (amending 40 ILCS 5/8-174(a)); *id.* (amending 40 ILCS 5/11-170(a)); *see also* 40 ILCS 5/8-137(b); 40 ILCS 5/8-182(a);

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[3] For retirees receiving an annuity of less than $22,000 per year, the increase may not be less than one percent, again without compounding. *See* Public Act 98-641, § 10 (new 40 ILCS 5/8-137(b-5)(4) and 8-137.1(b-5)(3)).

40 ILCS 5/11-134.1(b); 40 ILCS 5/11-174(b); MEABF Ans. ¶ 44. The Act increases the required employee contribution by .5 percent each year from 2015 to 2019, when the contribution reaches 11 percent. *See* Pub. Act 98-641, § 10 (amending 40 ILCS 5/8-174(a)); *id.* (amending 40 ILCS 5/11-170(a)); *see also* City Ans. ¶ 45. Thereafter, the required contribution remains fixed at 11 percent, unless the MEABF reaches a 90-percent funding ratio, at which point employee contributions decrease to 9.75 percent and remain at that level so long as the Fund maintains the 90-percent ratio. *Id.* If the funding ratio drops below 90 percent, then the employee contribution increases once again to 11 percent of salary. *Id.*

II. The Act's Funding Provisions

The Act also includes certain provisions concerning the City's contributions to the Fund. Specifically, the Act requires progressive increases in the City's contributions, with the goal of 90-percent funding, on an actuarial basis, by 2055. *See* Pub. Act. 98-641, § 10 (amending 40 ILCS 5/8-173 and 40 ILCS 5/11-169 to add new subsection (a-5)). That funding obligation, however, includes a five-year ramp-up period during which contributions are the *lesser* of the actuarially-determined amount or a multiple of employee contributions. *Id.* (new subsection (a-5) to 40 ILCS 5/8-173 and 40 ILCS 5/11-169 providing that contribution shall be "lesser of" actuarial computation in paragraph (a-5)(i) or specified multiple in paragraph (a-5)(ii)). If the City fails to make the required contributions, the State Comptroller is required to redirect into the Fund specified portions of any State grants to the City. *Id.* (amending 40 ILCS 5/8-173 and 40 ILCS 5/11-169 to add new subsection (a-10)). In addition, if the City fails to make its required contributions, the Fund's Board is authorized to bring a *mandamus* action. *Id.* (new 40 ILCS 5/8-173.1(a) and 40 ILCS 5/11-169.1(a)). This right of action, however, is qualified in two important respects: first, the Board may, but is not required to, bring a *mandamus* action;

second, "[i]n ordering the city to make the required payment, the court may order a reasonable payment schedule to enable the city to make the required payment without significantly imperiling the public health, safety, or welfare." *Id.* (new 40 ILCS 5/8-173.1(b) and 40 ILCS 5/11-169.1(b)).

ARGUMENT

Because the Pension Protection Clause withholds from the General Assembly *any* authority to diminish pension benefits promised to public employees, Public Act 98-641 lies beyond the constitutional limits of legislative power and must be struck down. Defendants' "net benefit" argument cannot overcome this fatal constitutional infirmity. Accordingly, "there is no genuine issue as to any material fact and [plaintiffs are] . . . entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

I. Because The General Assembly Has No Power To Diminish Promised Pension Benefits, The Act Is Unconstitutional.

The Pension Protection Clause "is a statement by the people of Illinois, made in the clearest possible terms, that the authority of the legislature does not include the power to diminish or impair the benefits of membership in a public retirement system." *In re Pension Reform Litig.*, 2015 IL 11858, ¶ 76. The Act diminishes public pension benefits, in violation of the Pension Protection Clause. The Act therefore exceeds the legislature's authority under the Illinois Constitution and must be declared null and void in its entirety.

In its recent *Pension Reform* decision, the Illinois Supreme Court left no doubt that the Pension Protection Clause shields the very benefits diminished by the Act. As a general matter, "once an individual begins work and becomes a member of a public retirement system, *any* subsequent changes to the Pension Code that would diminish the benefits conferred by membership in the retirement system cannot be applied to that individual." *Id.*, ¶ 46 (emphasis

added). "Retirement annuity benefits are unquestionably a benefit of [the] contractually-enforceable relationship resulting from membership . . . ." *Id.*, ¶ 47 (internal quotations omitted). "Indeed, they are among the most important benefits provided by those [retirement] systems." *Id.*

The benefits protected by the Pension Protection Clause "'necessarily include[] the right to use the statutory formula' that determines the amount of pension annuity payments, and that formula includes the statutory benefit increases." *Id.*, ¶ 49 (quoting with approval analysis of Arizona's analogous constitutional provision in *Fields v. Elected Officials' Ret. Plan*, 320 P.3d 1160, 1166 (Ariz. 2014)); *see also id.*, ¶ 9 ("The annual annuity adjustments are built-in to the pension benefit . . . ."). Put simply, "'benefit increases' are 'constitutionally protected.'" *Id.*, ¶ 50 (quoting *Fields*, 320 P.3d at 1166).

Moreover, the Pension Code's specified employee contribution levels also fall within the ambit of the Pension Protection Clause. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶¶ 73-74 (noting failure of proposal that constitutional convention delegates revise Clause to permit, *inter alia*, "reasonable modifications in employee rates of contribution [and] minimum service requirements"); *see also* 4 Record of Proceedings, Sixth Illinois Constitutional Convention ("Record of Proceedings") (Exhibit 2 hereto) at 2931 ("[I]f you mandate the public employees in the state of Illinois to put in their 5 percent or 8 percent or whatever it may be monthly, and you say when you employ these people, 'Now, if you do this, when you reach sixty-five, you will receive $287 a month,' that is, in fact, is what you will get.") (remarks of Delegate Green). Put another way, eligibility for an annuity based on a particular contribution level is a constitutionally-protected "benefit of the enforceable contractual relationship resulting from membership" in the MEABF. *Kanerva v. Weems*, 2014 IL 115811, ¶ 38.

Here, there can be no dispute that the Act diminishes those protected pension benefits in multiple ways, as described above: (i) in multiple years, it eliminates entirely what were formerly "automatic" annuity increases; (ii) it reduces those increases in the years when they are provided; and (iii) it increases required contributions from current employees. Those diminishments include some of the very pension-reducing mechanisms that the Supreme Court just recently condemned in the *Pension Reform Litigation*. *See* 2015 IL 118585, ¶ 27 (listing Public Act 98-599's "provisions designed to reduce annuity benefits," including replacement of "flat 3% annual increases to [retirees'] annuities" with "system under which annual annuity increases are determined according to a variable formula and are limited," and elimination of "at least one and up to five annual annuity increases").

In short, just as in the case of Public Act 98-599,

> there is simply no way that the annuity reduction provisions in [Public Act 98-641] can be reconciled with the rights and protections established by the people of Illinois when they ratified the Illinois Constitution of 1970 and its pension protection clause. . . . In enacting the provisions, the General Assembly overstepped the scope of its legislative power. This [C]ourt is therefore obligated to declare those provisions invalid.

In re Pension Reform Litig., 2015 IL 118585, ¶ 47.

II. The Pension Protection Clause And Binding Illinois Supreme Court Precedent Foreclose Defendants' "Net Benefit" Theory.

The City and the State have argued that, because the Act provides a "net benefit" to MEABF members, it does not violate the Pension Protection Clause. City TRO Br. at 12. Defendants do not intend by this euphemism to suggest that the Act leaves promised pension benefits undiminished. *See* City Ans. ¶ 41 (admitting MEABF announcement that 2015 annuity increase would be only .85%); *id.* ¶ 45 (admitting increase in employee contributions). Rather, defendants' premise—incompatible with the Pension Protection Clause to begin with—is that

pension obligations to current and former City workers are "an illusory set of promises." City TRO Br. at 14. Starting from that unconstitutionally low benchmark, defendants contend that the Act "preserves and protects" pension benefits. City TRO Br. at 11; State TRO Br. at 4. This argument flies in the face of the Pension Protection Clause's plain meaning and intended purpose, as only recently reaffirmed by the Illinois Supreme Court.

A. Defendants' "Net Benefit" Theory Ignores the Pension Protection Clause's Mandate That Promised Pension Benefits Be Paid When Due.

The City and the State claim that the Act is permissible because it "replaces an *illusory* set of promises with *actual* pension benefits that can and will be funded and paid in order to provide retirees the benefits they have been promised." City TRO Br. at 14 (emphasis added); *see also* State TRO Br. at 4 (endorsing City's argument). If accepted, that outrageous claim would nullify the Pension Protection Clause and make a mockery of the Illinois Constitution.

By cynically characterizing its own solemn pension obligations as an "illusory set of promises," the City treats the constitutional right conferred by Pension Protection Clause—a right to receive promised pension benefits when due—as fool's gold. In the City's (and the State's) view, that constitutional guarantee may be circumvented through legislative enactment of funding schedules that knowingly put municipal pension funds on a path toward insolvency. Unlike defendants' "police powers" argument, the "net benefit" theory does not even require fiscal exigency. Instead, based on whatever spending priorities or political calculus carries the day, the General Assembly may prescribe City contributions that are inadequate to meet pension obligations. The City may then sit back without legal consequence as its own pension funds "run out of money." City TRO Br. at 11. Far from violating the Pension Protection Clause, defendants maintain, the Act should be seen as a generous windfall to MEABF members, who otherwise "will not be paid." *Id.* Although defendants are thus willing to cast aside their

constitutional obligations as "illusory," defendants insist that plaintiffs should accept *statutory* assurances (assurances that may be yanked away whenever politically expedient) that retirees will receive "the [now-diminished] benefits they have been promised."

Defendants' cynical attempt to subvert the Illinois Constitution is foreclosed by Illinois Supreme Court precedent that is so well-settled as to hardly require restatement. This State's highest court has instructed time and again that the Pension Protection Clause confers upon public pension system members an absolute and legally enforceable right to receive retirement benefits when due—regardless of particular funding levels over time. *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 16 (although "how the benefits would be financed" was left to other branches of government, prohibition against reduction of benefits "was and is unquestioned"); *id.*, ¶ 46 ("Under article XIII, section 5, members of pension plans subject to its provisions have a legally enforceable right to receive the benefits they have been promised."); *McNamee v. State*, 173 Ill. 2d 433, 444 (1996) ("This court concluded that section 5 of article XIII does not create a contractual basis for participants to expect a particular level of funding, but only a contractual right 'that they would receive the money due them at the time of retirement.'") (quoting *People ex rel. Illinois Fed'n of Teachers v. Lindberg*, 60 Ill. 2d 266, 271 (1975)).

In other words, defendants' insistence that the City's pension obligations be regarded as an "illusory set of promises" is nothing less than a plea to pretend that the Pension Protection Clause does not exist.

B. Defendants' "Net Benefit" Theory Ignores the Legislature's Lack of Authority to Diminish Promised Pension Benefits.

As demonstrated above, the legislature is without authority to diminish pension benefits by altering the "statutory formula" that determines those benefits. *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 49; *see also id.*, ¶ 85 ("The General Assembly may not legislate on a subject

withdrawn from its authority by the constitution . . . ."). The General Assembly may not arrogate that power to itself by enacting provisions that unilaterally and unconstitutionally diminish pension benefits alongside other provisions that purportedly "benefit" members by increasing statutorily-prescribed contributions from the City. If that tactic were permissible, the Pension Protection Clause would be ineffectual.

Indeed, the just-invalidated State pension "reform" legislation also included provisions that purportedly benefited pension system members. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶¶ 25-26 (benefits included authorization for *mandamus* proceedings in Illinois Supreme Court if State failed to make required contributions; "special directives with respect to certain payments to the pension systems"; and nominal reduction in certain employees' required contributions). Yet those "beneficial" provisions did not save the legislation at issue there from being declared unconstitutional. Nor can defendants' "net benefit" theory obscure the fact that Public Act 98-641 likewise exceeds the limits of legislative power by unilaterally diminishing pension benefits. As described above, the Act does so by reducing and, in some years, eliminating annuity increases, and by requiring employees to contribute more toward their pensions only to receive those lesser annuities in retirement.[4]

The fallacy of the "net benefit" theory is even more self-evident when one considers that the Act's supposed "benefits" are creatures of statute, capable of revocation upon legislative

[4] Another fatal deficiency in the "net benefit" argument is that, even accepting the City's characterization, the Act's so-called "benefits" work on a macro level over time, by firming up the solvency of the MEABF. Whether an individual member ever reaps those "benefits" depends, for example, on when she retires and how long she lives. In contrast, the Act's pension-diminishing provisions have already taken effect. So, even under the City's theory, some members eventually receive a "net benefit," while others experience no "benefit" at all, only a diminishment in their pension benefits. Yet the constitutional protection of public pension benefits is an individual right. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶ 46 ("[O]nce an individual begins work and becomes a member of a public retirement system, any subsequent changes to the Pension Code that would diminish the benefits conferred by membership in the retirement system *cannot be applied to that individual.*") (emphasis added).

whim. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶ 82 ("[D]elegates to the constitutional convention were 'mindful that in the past, appropriations to cover state pension obligations had been made a political football and the party in power would just use the amount of the state contribution to help balance budgets . . . .") (internal quotations and citation omitted). As Speaker Madigan acknowledged with regard to analogous provisions in Public Act 98-599, the General Assembly may repeal a statutory requirement of new and additional pension system funding. *See* 98th Il. Gen. Assem., House Proceedings, December 3, 2013, at 31-32 (Exhibit 3 hereto).[5] One cannot "net" such ephemeral *statutory* "benefits" against an absolute *constitutional* guarantee.[6]

[5] Although current State law requires the City to contribute roughly an additional $538 million (or a total of $839 million) into police and fire pension funds in 2016, that statutorily-required increase was not reflected in the City's 2015 budget property tax levy, which budgeted approximately $548 million less than the necessary funding level (a roughly $10 million *decrease* from the previous year). *See* City of Chicago 2015 Budget Recommendations at 3 (Exhibit 4 hereto) (full text available at http://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/2015Budget/2015_Budget_REC_web.pdf); *see also May Dep't Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976) (permitting judicial notice of public documents that "fall within the category of readily verifiable facts which are capable of instant and unquestionable demonstration") (citations and internal quotations omitted); *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 17 n.4 (citing same). As of the date of this Memorandum, the General Assembly appears poised to accede to the City's request that the schedule for the City's required contributions to the police and fire pension funds be stretched farther into the future. *See* Amendment to Senate Bill 777 (attached as Exhibit 5 hereto) (amending 40 ILCS 5/5-168(a) and 40 ILCS 5/6-165(a) to reduce by hundreds of millions of dollars the City's contribution to its police and fire pension funds in 2016 through 2020). Although the police and fire pension funds are not at issue in this litigation, the point is that *statutorily* prescribed contribution schedules are no substitute for the *constitutional* guarantee embodied in the Pension Protection Clause.

[6] Moreover, as described above, the Act's "benefits" are far less concrete than might appear at first blush. The requirement that the City make actuarially-determined contributions does not fully kick in for another five years—a period that leaves plenty of time for further backsliding and statutory "adjustments" to (already-diminished) pension benefits. *See* Pub. Act 98-641, § 10 (new subsection 40 ILCS 5/8-173(a-5)). And the *mandamus* proceeding that the Board is authorized to bring if the City fails to make required contributions could actually result in a *relaxation* of the City's statutory funding obligations. *See id.* (new 40 ILCS 5/8-173.1(b)) (authorizing court to "order a *reasonable payment schedule* to enable the city to make the required payment without significantly imperiling the public health, safety, or welfare") (emphasis added).

C. Defendants' "Net Benefit" Theory Is Incompatible With the Pension Protection Clause's Purpose—To Absolutely Guarantee Payment of State and Municipal Pension Benefits, Regardless of Specific Funding Levels Over Time.

Defendants' "net benefit" theory is at odds not only with the letter of the Pension Protection Clause but also with its purpose.

The Pension Protection Clause arose out of "[c]oncern over ongoing funding deficiencies and the attendant threat to the security of retirees in public pension systems." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 13. It was designed "to protect the benefits of membership in public pensions not by dictating specific funding levels, but by safeguarding the benefits themselves." *Id.*, ¶ 16. In other words, although the Clause does not mandate specific funding levels at any point in time, its absolute protection of pension benefits is intended "to force the funding of the pensions indirectly, by putting the state and ***municipal governments*** on notice that they are responsible for those benefits." *McNamee* 173 Ill. 2d at 442 (emphasis added). Yet, under defendants' "net benefit" theory, statutorily-prescribed underfunding can be used to justify benefit reductions on the ground that pension obligations have become "illusory." If that rationale passed constitutional muster, then the Clause would not even "indirectly" force the funding of public pensions.

At bottom, defendants' "net benefit" argument rests on the premise that, without the Act, "benefits promised to retirees will not be paid." City TRO Br. at 11. Yet to accept that premise is to presume an unconstitutional outcome. The Pension Protection Clause was intended to foreclose just that sort of self-fulfilling prophecy: the Clause "'served to eliminate *any* uncertainty as to whether state ***and local governments*** were obligated to pay pension benefits to the employees.'" *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 16 (quoting *People ex rel. Sklodowski v. State*, 182 Ill. 2d 220, 233 (1998)) (emphasis added); *see also In re Pension*

Reform Litig., 2015 IL 118585, ¶ 82 ("[The constitutional convention delegates] understood that steps were necessary 'in order to protect public employees who are beginning to lose faith in the ability of the state *and its political subdivisions* to meet these benefit payments' and to address the 'insecurity on the part of the public employees [which] is really defeating the very purpose for which the retirement system was established . . .'") (quoting *Kanerva*, 2014 IL 115811, ¶ 46 (quoting Record of Proceedings at 2925 (statements of Delegate Green))) (emphasis added).

In introducing what became the Pension Protection Clause, Delegate Green explained that one of the "overwhelming reasons" for the Clause was a New Jersey Supreme Court decision. Record of Proceedings at 2931. That decision, *Spina v. Consol. Police and Firemen's Pension Fund Comm'n*, 197 A.2d 169 (N.J. 1964), rejected Contract Clause and due process challenges to pension benefit diminishments on the ground that the New Jersey pension systems were so underfunded as to carry "the promise of inevitable doom." *Id.* at 170, 172-76; *see also* Record of Proceedings at 2931. "Now this," Delegate Green explained, was what the public employees of Illinois were "very fearful of." Record of Proceedings at 2931. By arguing today that pension benefits may be diminished because otherwise they "will not be paid" in the future, the City echoes the very "inevitable doom" rationale that motivated the Pension Protection Clause in the first place.

Moreover, the Pension Protection Clause was intended to shield municipal as well as State retirement systems. Indeed, the Clause reflected concerns that the Constitution's "creation of broad home rule powers for municipalities . . . could lead municipalities into debt and result in their abandoning their pension obligations to police officers and fire fighters." *McNamee*, 173 Ill. 2d at 440; *see also In re Pension Reform Litig.*, 2015 IL 118585, ¶ 14 ("[T]he proposed creation of broad home rule powers for municipalities had led to concerns that, unless they were

constrained, municipalities who preferred to use retirement money for other public purposes such as street repair might abandon their pension obligations . . . .") (citing Record of Proceedings at 2926 (statements of Delegate Kinney)). By attempting here to abdicate responsibility for its own employees' pensions, the City is validating those concerns.

In short, under the Illinois Constitution, the obligation to pay promised pension benefits is absolute and unconditional. Accordingly, legislation that diminishes public pension benefits cannot be upheld on the ground that it "preserves and protects" those benefits from not being paid in the future. The Pension Protection Clause already protects those benefits—by providing an absolute constitutional guarantee that pensions will be paid in full as they come due.

D. The General Assembly's Unconstitutional Diminishment of Pension Benefits Cannot Be Justified on the Basis of Statutory Provisions Purportedly Qualifying the City's Pension Obligations.

Based on previous submissions to this Court, it is apparent that defendants' "net benefit" argument rests on a reading of the City's *statutory* obligations that simply ignores the Pension Protection Clause's *constitutional* imperatives.

The "net benefit" argument proceeds along the following lines: The City contributes to the MEABF (and the LABF) no more and no less than what the Pension Code requires. City TRO Br. at 12; City TRO Surreply at 5 (citing 40 ILCS 5/8-173(a) and 5/11-169(a) as requiring City to levy taxes "not to exceed" specific sums). That statutorily-mandated funding level has been inadequate, resulting in defendants' claim that the MEABF and LABF "are drastically underfunded and spend more . . . than they receive in pension contributions and investment returns." City TRO Br. at 11. Further, according to the City, as a matter of statute, its "obligations are limited to those amounts that the Pension Code requires the City to pay." City TRO Br. at 12 (citing 40 ILCS 5/22-403). Indeed, the City goes so far as to contend that it "is no more responsible for the funds' obligations than it would be for the obligations of any other

separate, independent legal entity." City TRO Surreply at 5; *see also id.* at 6 ("only the [pension] funds, and not the City, are liable for pension benefits") (emphasis in original). Accordingly, absent the additional contributions prescribed by the Act, "the Funds will run out of money in a matter of years, and the benefits promised to retirees *will not be paid*." City TRO Br. at 11 (emphasis added). It is in this sense that MEABF members are said to be "better off with [the Act] than without it." City TRO Br. at 12.[7]

This argument is fundamentally flawed at virtually every level of analysis: (i) it overlooks the City's home-rule powers of taxation; (ii) it ignores the contractual relationship between "employer and employee" created by the Pension Protection Clause as well as the constitutional mandate that promised pension benefits be paid; and (iii) it sidesteps the central issue before the Court, which is not whether the City is to blame for its pensions' unfunded liabilities, but the straightforward question whether the General Assembly had the constitutional authority to adopt the Act's pension-diminishing provisions. Because the Pension Protection Clause withholds that authority from the General Assembly, the Act is unconstitutional.

1. Under the City's home-rule authority, it has the power to contribute more to its pension funds than the statutorily-mandated floor.

Under the Illinois Constitution, the City's tax levying authority is not restricted by the Pension Code provisions that purportedly tie its hands. *See* City TRO Surreply at 5 (citing 40 ILCS 5/8-173(a) and 5/11-169(a)). Those Pension Code provisions were enacted prior to the ratification of the Illinois Constitution in 1970 and thus were superseded by the Constitution's grant of home-rule authority, including home-rule powers of taxation. *See* Ill. Const. 1970, art.

[7] Taken to its logical conclusion, the City's argument implies that any legislation purporting to shore up a municipal pension fund's shaky finances can be characterized as a "benefit"—regardless of whether the municipality contributes anything. The municipality can declare, as the City does here, that legislation diminishing pension benefits enables members to receive *something* rather than nothing, and therefore bestows a "net benefit."

VII, § 6(a); *City of Rockford v. Gill*, 75 Ill. 2d 334, 341 (1979) ("It is manifestly impossible to find a legislative intention to limit the city's home rule powers of taxation in a statute that predates the 1970 Constitution . . . ."). Further, to the extent that those Pension Code provisions have been subsequently amended, at no point did the General Assembly "specifically express" an intention to restrict the City's home rule taxing powers. *Gill*, 75 Ill. 2d at 342 ("[A] statute enacted after the adoption of the 1970 Constitution can restrict home rule taxing powers only if it is approved by a three-fifths majority of both houses . . . and specifically expresses a restrictive purpose."). Accordingly, the law is crystal clear that the City has the power to raise revenues to contribute more to the MEABF than the statutorily-mandated floor. *See Trust No. 1105 v. People ex rel. Little*, 328 Ill. App. 3d 1033, 1036 (4th Dist. 2002) (rejecting challenge under Pension Code to taxes levied in excess of required contributions to municipal retirement funds).[8]

2. Contrary to the City's claim, a pre-1970 Pension Code provision cannot override the contractual relationship "between employer and employee" mandated by the Pension Protection Clause, nor can it override the constitutional directive that pension benefits be paid as promised.

Similarly misguided is defendants' reliance on section 22-403 of the Pension Code, which was adopted in 1963 and has since remained unchanged. *See* City TRO Surreply at 5. That provision provides in relevant part as follows:

> Any pension payable under any law hereinbefore referred to [*i.e.*, under the Pension Code] shall not be construed to be a legal obligation or debt of the State, or of any county, city, town, municipal corporation or body politic and corporate

[8] Moreover, the City ignores subsection (f) of Pension Code section 8-173 and the equivalent provision in section 11-169, each of which authorizes the City, "[i]n lieu of levying all or a portion of the tax required" to deposit with the pension fund "an amount that, together with the taxes levied under this Section for that year, is *not less* than the amount of the city contributions for that year as certified by the board to the city council." 40 ILCS 5/8-173(f) (emphasis added). "The deposit may be derived from any source legally available for that purpose . . . ." *Id.*; *see also* 40 ILCS 5/11-169(f) (same). Those provisions set a floor—not a cap—on the amount the City must contribute each year to the MEABF and LABF. Nothing precludes the City from contributing more to each Fund than the General Assembly prescribes.

> located in the State, other than the pension fund concerned, but shall be held to be solely an obligation of such pension fund, unless specifically provided in the law creating such fund.

40 ILCS 5/22-403.

The City cites this provision in support of its argument that "pensions are not the obligations or debts of the City." City TRO Surreply at 5 (emphasis in original). As demonstrated above and discussed further below, however, the City's disavowal of its pension obligations contravenes the Pension Protection Clause and a consistent body of Illinois Supreme Court precedent elucidating the Clause. Therefore, whatever merit the City's statutory construction might have had in 1963, it cannot have survived ratification of the Illinois Constitution of 1970 and the adoption of the Pension Protection Clause. *See generally Kanellos v. Cook County*, 53 Ill. 2d 161, 166-67 (1972) (pre-1970 statute prohibiting county from incurring debt without prior referendum was inconsistent with 1970 Constitution's home-rule provisions and therefore was "inapplicable as applied to a home-rule county"); *Gill*, 75 Ill. 2d at 341 ("It is manifestly impossible to find a legislative intention to limit the city's home rule powers of taxation in a statute that pre-dates the 1970 Constitution because . . . the concept of home rule was 'totally foreign' to pre-1970 legislative contemplation.").

The Supreme Court reaffirmed in its recent *Pension Reform* decision that the Pension Protection Clause safeguards public pension benefits "in two ways": "[i]t first mandates a contractual relationship *between the employer and the employee*; and, secondly, it mandates the General Assembly not to impair or diminish these benefits." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 15 (quoting Record of Proceedings at 2925 (statements of Delegate Green)) (emphasis added). Yet defendants contend that the City has no obligation to honor its employees' and retirees' pension rights—no obligation beyond what would exist for "any other separate, independent legal entity." City TRO Surreply at 5. If accepted, that offensive claim

would negate entirely the Pension Protection Clause's first safeguard—a constitutionally-mandated contractual relationship "between the employer [*i.e.*, the City] and the employee."

Indeed, in their reliance on section 22-403 and the Pension Code's tax levy provisions, defendants turn the Pension Protection Clause on its head. Defendants argue, in essence, that MEABF members' constitutional right to promised pension benefits is qualified by purported statutory limitations on the City's obligation to fund and pay pension benefits. *See* City TRO Surreply at 6 ("One contractual condition [of pension system membership] that pre-dates enactment of the Pension Clause is the Pension Code's proviso that only the funds, and not the City, are liable for pension benefits."). But, as noted, the Illinois Supreme Court has held repeatedly that, although the Pension Protection Clause does not mandate specific funding levels at any particular point in time, it absolutely requires that promised pension benefits (including promised annuity increases) be paid when due according to the applicable "statutory formula." *See supra* at 10 (citing authority for "unquestioned" right of members to "receive the money due them at time of retirement"); *see also In re Pension Reform Litig.*, 2015 IL 118585, ¶ 49 (citing *Fields*, 320 P.3d at 1166, for proposition that protected benefit includes "statutory formula").

The City's reliance on section 22-403 runs afoul of the Pension Protection Clause in another respect as well. The Illinois Supreme Court has admonished repeatedly that a group action to compel funding may be brought under the Clause's impairment provision once a fund is "on the verge of default or imminent bankruptcy." *McNamee*, 173 Ill. 2d at 446-47 (quoting Record of Proceedings at 2926 (comments of Delegate Kinney)); *Sklodowski*, 182 Ill. at 222 ("In *McNamee*, we recognized that, although the pension protection clause protects benefits, not funding, a beneficiary need not wait until benefits are actually diminished to bring suit under the

clause."); *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 16 n.3 ("Consistent with an earlier opinion . . . in *McNamee* . . . , and comments at the Constitutional Convention, we did not [in *Sklodowski*] . . . foreclose the possibility that a direct action could be brought by pension system members to compel funding if a pension fund were on the verge of default or imminent bankruptcy."). The City's startling contention that it may sit back without legal repercussion while its pension funds "run out of money" and its retirees are not paid, City TRO Br. at 11, cannot be squared with this controlling precedent.

If defendants are correct that "only the [pension] funds . . . are liable for pension benefits" under section 22-403, then not only Chicago but all the State's municipalities may escape their pension obligations. If that is the case, then endemic controversy over public pensions is much ado about nothing, and the Illinois Supreme Court's repeated insistence that public employees "receive the money due them at the time of retirement," *McNamee*, 173 Ill. 2d at 444, is so much empty rhetoric. That absurd position should be rejected out of hand.

In fact, the City's posture in this litigation shows that it does not genuinely believe its own claim that "only the funds, and not the City, are liable for pension benefits." The City alleges in its affirmative defense that, absent pension "reform," it will be required to impose "massive cuts" to public services and "dramatic" tax increases—that "there is no feasible way the City could borrow, tax, or cut its way toward fully funding the mounting pension obligations absent reform." *See* City Ans. at 19, Affirmative Matter in Defense of Claims Asserted ("Affirmative Defense") ¶ 5. On this basis, the City asserts that the Act "represents a valid exercise of the City's reserved sovereign powers to modify contractual rights and obligations." *Id.* ¶ 11. But if, as the City claims, "only the funds, and not the City, are liable for pension benefits," then there is no reason the City should be forced into this purportedly untenable

situation. Yet, at bottom, that preposterous claim is the central premise behind defendants' "net benefit" argument. The argument, in other words, is not only constitutionally unsound; it is disingenuous.

3. In any case, the Act exceeds the constitutional limits of legislative authority under the Pension Protection Clause.

In any event, the constitutional question before the Court is narrower than the City's "net benefit" argument would suggest. The question presented is not whether the City is to blame for the MEABF's unfunded liabilities, nor whether the City or the State is ultimately responsible for rectifying that situation. The question is whether the General Assembly possessed the constitutional authority to enact the pension-diminishing provisions in Public Act 98-641. On that question, our Supreme Court has already spoken: "In enacting the provisions, the General Assembly overstepped the scope of its legislative power." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 47. Accordingly, the Act must be declared unconstitutional.

III. The Act Cannot Be Upheld As An Exercise Of "Police Powers."

Accompanying this Memorandum is a Motion to Strike the City's Affirmative Defense, which defense asserts that the Act constitutes a valid exercise of "reserved sovereign powers" or "police powers." Rather than reiterate the points made in that document, plaintiffs respectfully incorporate it by reference here. In summary, the Illinois Supreme Court has now squarely reaffirmed long-standing Illinois law that the Pension Protection Clause withholds from the legislature *any* power to diminish constitutionally-protected pension benefits. *See In re Pension Reform Litig.*, 2015 IL 118585, ¶¶ 70-85. "Indeed, accepting the State's [and the City's] position that reducing retirement benefits is justified by economic circumstances would require that we allow the legislature to do the very thing the pension protection clause was designed to prevent it from doing. Article XIII, section 5, would be rendered a nullity." *Id.*, ¶ 75. Accordingly, the

Act cannot be defended as a "valid exercise of the City's [or the State's] reserved sovereign powers to modify contractual rights and obligations." *See* Affirmative Defense ¶ 11.

CONCLUSION

"[T]he General Assembly cannot enact legislation that conflicts with provisions of the constitution unless the constitution specifically grants it such authority." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 81. Because Public Act 98-641 conflicts with the Pension Protection Clause's absolute prohibition against unilateral diminishment of promised pension benefits, the Act exceeds the constitutional limits of legislative authority and must be invalidated.[9]

Accordingly, plaintiffs respectfully request that the Court enter an order granting their motion for summary judgment and (i) declaring that Public Act 98-641 violates the Pension Protection Clause and is therefore void, illegal and of no force and effect; (ii) awarding permanent injunctive relief as necessary to implement such declaration; (iii) ordering the MEABF to restore retired MEABF members to their respective pension benefits, including any withheld annuity increases and interest on those amounts, as if Public Act 98-641 had not been enacted; (iv) ordering the MEABF to return to MEABF members who are active employees the additional contributions made, including interest on those amounts, as if Public Act 98-641 had not been enacted; (v) awarding plaintiffs their reasonable attorneys' fees and costs incurred in enforcing their rights under the Pension Protection Clause, including fees and costs incurred in the prosecution of this lawsuit; and (vi) awarding plaintiffs such other and further relief as the Court deems just.

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[9] Particularly given the severability clause in section 93 of Public Act 98-641, once the pension-diminishing provisions of the Act are invalidated, the Act "all but evaporates." *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 93. Accordingly, the Act must be struck down in its entirety.

Dated: June 3, 2015

Respectfully submitted,

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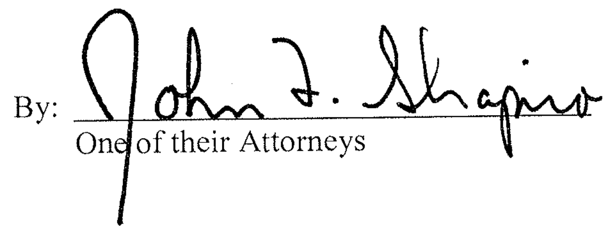
By: 
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EXHIBIT 1

AN ACT concerning public employee benefits.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Findings. It is the intention of the General Assembly to address an immediate funding crisis that threatens the solvency and sustainability of the public pension systems ("Pension Funds") serving employees of the City of Chicago ("City"). The Pension Funds include the Municipal Employees' Annuity and Benefit Fund of Chicago ("MEABF") and the Laborers' and Retirement Board Employees' Annuity Benefit Fund of Chicago ("LABF"). The General Assembly observes that both the pension benefits provided by these Pension Funds and the City's obligation to contribute to these Pension Funds are established by State law. The General Assembly further observes that the City has continuously made the required contributions to these Pension Funds. After reviewing the condition of the Pension Funds, potential sources of funding, and assessing the need for reform thereof, the General Assembly finds and declares that:

1. The overall financial condition of these two City pension funds is so dire, even under the most optimistic assumptions, a balanced increase in funding, both from the City and from its employees, combined with a modification of annual adjustments for both current and future retirees, is necessary to stabilize and fund the pension funds.

2. While considering the combined unfunded liabilities of the MEABF and LABF, as well as other pension funding that ultimately relies on funds from the City's property tax base, a combination of modifications to employee contribution rates and annual adjustments and increased revenues are necessary to keep the City funds solvent. The City, even as a home rule unit, lacks the ability and flexibility to raise sufficient revenues to fund the current level of pension benefits of these Pension Funds while at the same time providing important public services essential to the public welfare.

3. The General Assembly has been advised by the City that the City cannot feasibly reduce its other expenses to address this serious problem without an unprecedented reduction in basic City services. Personnel costs constitute approximately 75% of the non-discretionary appropriations for the City. As such, reductions in City expenditures to fund pensions would necessarily result in substantial cuts to City personnel, including in key services areas such as public safety, sanitation, and construction.

4. In sum, the crisis confronting the City and its Funds is so large and immediate that it cannot be addressed through increased funding alone, without modifying employee contribution rates and annual adjustments for current and future retirees. The consequences to the City of attempting to do so would be draconian. Accordingly, the General Assembly concludes that, unless reforms are enacted, the benefits

currently promised by the Pension Funds are at risk.

Section 10. The Illinois Pension Code is amended by changing Sections 1-160, 8-137, 8-137.1, 8-173, 8-174, 11-134.1, 11-134.3, 11-169, and 11-170 and by adding Sections 8-173.1, 8-174.2, 11-169.1, and 11-179.1 as follows:

(40 ILCS 5/1-160)

(Text of Section before amendment by P.A. 98-622)

Sec. 1-160. Provisions applicable to new hires.

(a) The provisions of this Section apply to a person who, on or after January 1, 2011, first becomes a member or a participant under any reciprocal retirement system or pension fund established under this Code, other than a retirement system or pension fund established under Article 2, 3, 4, 5, 6, 15 or 18 of this Code, notwithstanding any other provision of this Code to the contrary, but do not apply to any self-managed plan established under this Code, to any person with respect to service as a sheriff's law enforcement employee under Article 7, or to any participant of the retirement plan established under Section 22-101. Notwithstanding anything to the contrary in this Section, for purposes of this Section, a person who participated in a retirement system under Article 15 prior to January 1, 2011 shall be deemed a person who first became a member or participant prior to January 1, 2011 under any retirement system or pension fund subject to this Section. The

changes made to this Section by Public Act 98-596 ~~this amendatory Act of the 98th General Assembly~~ are a clarification of existing law and are intended to be retroactive to the effective date of Public Act 96-889, notwithstanding the provisions of Section 1-103.1 of this Code.

(b) "Final average salary" means the average monthly (or annual) salary obtained by dividing the total salary or earnings calculated under the Article applicable to the member or participant during the 96 consecutive months (or 8 consecutive years) of service within the last 120 months (or 10 years) of service in which the total salary or earnings calculated under the applicable Article was the highest by the number of months (or years) of service in that period. For the purposes of a person who first becomes a member or participant of any retirement system or pension fund to which this Section applies on or after January 1, 2011, in this Code, "final average salary" shall be substituted for the following:

(1) In Article 7 (except for service as sheriff's law enforcement employees), "final rate of earnings".

(2) In Articles 8, 9, 10, 11, and 12, "highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal".

(3) In Article 13, "average final salary".

(4) In Article 14, "final average compensation".

(5) In Article 17, "average salary".

(6) In Section 22-207, "wages or salary received by him at the date of retirement or discharge".

(b-5) Beginning on January 1, 2011, for all purposes under this Code (including without limitation the calculation of benefits and employee contributions), the annual earnings, salary, or wages (based on the plan year) of a member or participant to whom this Section applies shall not exceed $106,800; however, that amount shall annually thereafter be increased by the lesser of (i) 3% of that amount, including all previous adjustments, or (ii) one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, including all previous adjustments.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the boards of the retirement systems and pension funds by November 1 of each year.

(c) A member or participant is entitled to a retirement annuity upon written application if he or she has attained age 67 and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article.

A member or participant who has attained age 62 and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article may elect to receive the lower retirement annuity provided in subsection (d) of this Section.

(d) The retirement annuity of a member or participant who is retiring after attaining age 62 with at least 10 years of service credit shall be reduced by one-half of 1% for each full month that the member's age is under age 67.

(e) Any retirement annuity or supplemental annuity shall be subject to annual increases on the January 1 occurring either on or after the attainment of age 67 or the first anniversary of the annuity start date, whichever is later. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted retirement annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

(f) The initial survivor's or widow's annuity of an otherwise eligible survivor or widow of a retired member or participant who first became a member or participant on or after January 1, 2011 shall be in the amount of 66 2/3% of the

retired member's or participant's retirement annuity at the date of death. In the case of the death of a member or participant who has not retired and who first became a member or participant on or after January 1, 2011, eligibility for a survivor's or widow's annuity shall be determined by the applicable Article of this Code. The initial benefit shall be 66 2/3% of the earned annuity without a reduction due to age. A child's annuity of an otherwise eligible child shall be in the amount prescribed under each Article if applicable. Any survivor's or widow's annuity shall be increased (1) on each January 1 occurring on or after the commencement of the annuity if the deceased member died while receiving a retirement annuity or (2) in other cases, on each January 1 occurring after the first anniversary of the commencement of the annuity. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted survivor's annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

(g) The benefits in Section 14-110 apply only if the person is a State policeman, a fire fighter in the fire protection service of a department, or a security employee of the

Department of Corrections or the Department of Juvenile Justice, as those terms are defined in subsection (b) of Section 14-110. A person who meets the requirements of this Section is entitled to an annuity calculated under the provisions of Section 14-110, in lieu of the regular or minimum retirement annuity, only if the person has withdrawn from service with not less than 20 years of eligible creditable service and has attained age 60, regardless of whether the attainment of age 60 occurs while the person is still in service.

(h) If a person who first becomes a member or a participant of a retirement system or pension fund subject to this Section on or after January 1, 2011 is receiving a retirement annuity or retirement pension under that system or fund and becomes a member or participant under any other system or fund created by this Code and is employed on a full-time basis, except for those members or participants exempted from the provisions of this Section under subsection (a) of this Section, then the person's retirement annuity or retirement pension under that system or fund shall be suspended during that employment. Upon termination of that employment, the person's retirement annuity or retirement pension payments shall resume and be recalculated if recalculation is provided for under the applicable Article of this Code.

If a person who first becomes a member of a retirement system or pension fund subject to this Section on or after

January 1, 2012 and is receiving a retirement annuity or retirement pension under that system or fund and accepts on a contractual basis a position to provide services to a governmental entity from which he or she has retired, then that person's annuity or retirement pension earned as an active employee of the employer shall be suspended during that contractual service. A person receiving an annuity or retirement pension under this Code shall notify the pension fund or retirement system from which he or she is receiving an annuity or retirement pension, as well as his or her contractual employer, of his or her retirement status before accepting contractual employment. A person who fails to submit such notification shall be guilty of a Class A misdemeanor and required to pay a fine of $1,000. Upon termination of that contractual employment, the person's retirement annuity or retirement pension payments shall resume and, if appropriate, be recalculated under the applicable provisions of this Code.

(i) (Blank).

(j) In the case of a conflict between the provisions of this Section and any other provision of this Code, the provisions of this Section shall control.

(Source: P.A. 97-609, eff. 1-1-12; 98-92, eff. 7-16-13; 98-596, eff. 11-19-13; revised 1-23-14.)

(Text of Section after amendment by P.A. 98-622)

Sec. 1-160. Provisions applicable to new hires.

(a) The provisions of this Section apply to a person who, on or after January 1, 2011, first becomes a member or a participant under any reciprocal retirement system or pension fund established under this Code, other than a retirement system or pension fund established under Article 2, 3, 4, 5, 6, 15 or 18 of this Code, notwithstanding any other provision of this Code to the contrary, but do not apply to any self-managed plan established under this Code, to any person with respect to service as a sheriff's law enforcement employee under Article 7, or to any participant of the retirement plan established under Section 22-101. Notwithstanding anything to the contrary in this Section, for purposes of this Section, a person who participated in a retirement system under Article 15 prior to January 1, 2011 shall be deemed a person who first became a member or participant prior to January 1, 2011 under any retirement system or pension fund subject to this Section. The changes made to this Section by Public Act 98-596 ~~this amendatory Act of the 98th General Assembly~~ are a clarification of existing law and are intended to be retroactive to the effective date of Public Act 96-889, notwithstanding the provisions of Section 1-103.1 of this Code.

(b) "Final average salary" means the average monthly (or annual) salary obtained by dividing the total salary or earnings calculated under the Article applicable to the member or participant during the 96 consecutive months (or 8 consecutive years) of service within the last 120 months (or 10

years) of service in which the total salary or earnings calculated under the applicable Article was the highest by the number of months (or years) of service in that period. For the purposes of a person who first becomes a member or participant of any retirement system or pension fund to which this Section applies on or after January 1, 2011, in this Code, "final average salary" shall be substituted for the following:

(1) In Article 7 (except for service as sheriff's law enforcement employees), "final rate of earnings".

(2) In Articles 8, 9, 10, 11, and 12, "highest average annual salary for any 4 consecutive years within the last 10 years of service immediately preceding the date of withdrawal".

(3) In Article 13, "average final salary".

(4) In Article 14, "final average compensation".

(5) In Article 17, "average salary".

(6) In Section 22-207, "wages or salary received by him at the date of retirement or discharge".

(b-5) Beginning on January 1, 2011, for all purposes under this Code (including without limitation the calculation of benefits and employee contributions), the annual earnings, salary, or wages (based on the plan year) of a member or participant to whom this Section applies shall not exceed $106,800; however, that amount shall annually thereafter be increased by the lesser of (i) 3% of that amount, including all previous adjustments, or (ii) one-half the annual unadjusted

percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, including all previous adjustments.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the boards of the retirement systems and pension funds by November 1 of each year.

(c) A member or participant is entitled to a retirement annuity upon written application if he or she has attained age 67 (beginning January 1, 2015, age 65 with respect to service under Article 8, 11, or 12 of this Code that is subject to this Section) and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article.

A member or participant who has attained age 62 (beginning January 1, 2015, age 60 with respect to service under Article 8, 11, or 12 of this Code that is subject to this Section) and has at least 10 years of service credit and is otherwise eligible under the requirements of the applicable Article may elect to receive the lower retirement annuity provided in subsection (d) of this Section.

(d) The retirement annuity of a member or participant who is retiring after attaining age 62 (beginning January 1, 2015, age 60 with respect to service under Article 8, 11, or 12 of this Code that is subject to this Section) with at least 10 years of service credit shall be reduced by one-half of 1% for each full month that the member's age is under age 67 (beginning January 1, 2015, age 65 with respect to service under Article 8, 11, or 12 of this Code that is subject to this Section).

(e) Any retirement annuity or supplemental annuity shall be subject to annual increases on the January 1 occurring either on or after the attainment of age 67 (beginning January 1, 2015, age 65 with respect to service under Article 8, 11, or 12 of this Code that is subject to this Section) or the first anniversary (the second anniversary with respect to service under Article 8 or 11) of the annuity start date, whichever is later. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted retirement annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

Notwithstanding any provision of this Section to the

contrary, with respect to service under Article 8 or 11 of this Code that is subject to this Section, no annual increase under this subsection shall be paid or accrue to any person in year 2025. In all other years, the Fund shall continue to pay annual increases as provided in this Section.

Notwithstanding Section 1-103.1 of this Code, the changes in this amendatory Act of the 98th General Assembly are applicable without regard to whether the employee was in active service on or after the effective date of this amendatory Act of the 98th General Assembly.

(f) The initial survivor's or widow's annuity of an otherwise eligible survivor or widow of a retired member or participant who first became a member or participant on or after January 1, 2011 shall be in the amount of 66 2/3% of the retired member's or participant's retirement annuity at the date of death. In the case of the death of a member or participant who has not retired and who first became a member or participant on or after January 1, 2011, eligibility for a survivor's or widow's annuity shall be determined by the applicable Article of this Code. The initial benefit shall be 66 2/3% of the earned annuity without a reduction due to age. A child's annuity of an otherwise eligible child shall be in the amount prescribed under each Article if applicable. Any survivor's or widow's annuity shall be increased (1) on each January 1 occurring on or after the commencement of the annuity if the deceased member died while receiving a retirement

annuity or (2) in other cases, on each January 1 occurring after the first anniversary of the commencement of the annuity. Each annual increase shall be calculated at 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1, whichever is less, of the originally granted survivor's annuity. If the annual unadjusted percentage change in the consumer price index-u for the 12 months ending with the September preceding each November 1 is zero or there is a decrease, then the annuity shall not be increased.

(g) The benefits in Section 14-110 apply only if the person is a State policeman, a fire fighter in the fire protection service of a department, or a security employee of the Department of Corrections or the Department of Juvenile Justice, as those terms are defined in subsection (b) of Section 14-110. A person who meets the requirements of this Section is entitled to an annuity calculated under the provisions of Section 14-110, in lieu of the regular or minimum retirement annuity, only if the person has withdrawn from service with not less than 20 years of eligible creditable service and has attained age 60, regardless of whether the attainment of age 60 occurs while the person is still in service.

(h) If a person who first becomes a member or a participant of a retirement system or pension fund subject to this Section

on or after January 1, 2011 is receiving a retirement annuity or retirement pension under that system or fund and becomes a member or participant under any other system or fund created by this Code and is employed on a full-time basis, except for those members or participants exempted from the provisions of this Section under subsection (a) of this Section, then the person's retirement annuity or retirement pension under that system or fund shall be suspended during that employment. Upon termination of that employment, the person's retirement annuity or retirement pension payments shall resume and be recalculated if recalculation is provided for under the applicable Article of this Code.

If a person who first becomes a member of a retirement system or pension fund subject to this Section on or after January 1, 2012 and is receiving a retirement annuity or retirement pension under that system or fund and accepts on a contractual basis a position to provide services to a governmental entity from which he or she has retired, then that person's annuity or retirement pension earned as an active employee of the employer shall be suspended during that contractual service. A person receiving an annuity or retirement pension under this Code shall notify the pension fund or retirement system from which he or she is receiving an annuity or retirement pension, as well as his or her contractual employer, of his or her retirement status before accepting contractual employment. A person who fails to submit

such notification shall be guilty of a Class A misdemeanor and required to pay a fine of $1,000. Upon termination of that contractual employment, the person's retirement annuity or retirement pension payments shall resume and, if appropriate, be recalculated under the applicable provisions of this Code.

(i) (Blank).

(j) In the case of a conflict between the provisions of this Section and any other provision of this Code, the provisions of this Section shall control.

(Source: P.A. 97-609, eff. 1-1-12; 98-92, eff. 7-16-13; 98-596, eff. 11-19-13; 98-622, eff. 6-1-14; revised 1-23-14.)

(40 ILCS 5/8-137) (from Ch. 108 1/2, par. 8-137)

Sec. 8-137. Automatic increase in annuity.

(a) An employee who retired or retires from service after December 31, 1959 and before January 1, 1987, having attained age 60 or more, shall, in January of the year after the year in which the first anniversary of retirement occurs, have the amount of his then fixed and payable monthly annuity increased by 1 1/2%, and such first fixed annuity as granted at retirement increased by a further 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%, and beginning with January of the year 1984 such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the

currently payable monthly annuity, including any increases previously granted under this Article. An employee who retires on annuity after December 31, 1959 and before January 1, 1987, but before age 60, shall receive such increases beginning in January of the year after the year in which he attains age 60.

An employee who retires from service on or after January 1, 1987 shall, upon the first annuity payment date following the first anniversary of the date of retirement, or upon the first annuity payment date following attainment of age 60, whichever occurs later, have his then fixed and payable monthly annuity increased by 3%, and such annuity shall be increased by an additional 3% of the original fixed annuity on the same date each year thereafter. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

(a-5) Notwithstanding the provisions of subsection (a), upon the first annuity payment date following (1) the third anniversary of retirement, (2) the attainment of age 53, or (3) January 1, 2002, whichever occurs latest, the monthly annuity of an employee who retires on annuity prior to the attainment of age 60 and has not received an increase under subsection (a) shall be increased by 3%, and the annuity shall be increased by an additional 3% of the current payable monthly annuity, including any increases previously granted under this Article, on the same date each year thereafter. The increases provided

under this subsection are in lieu of the increases provided in subsection (a).

(a-6) Notwithstanding the provisions of subsections (a) and (a-5), for all calendar years following the year in which this amendatory Act of the 93rd General Assembly takes effect, an increase in annuity under this Section that would otherwise take effect at any time during the year shall instead take effect in January of that year.

(b) Subsections (a), (a-5), and (a-6) are not applicable to an employee retiring and receiving a term annuity, as herein defined, nor to any otherwise qualified employee who retires before he makes employee contributions (at the 1/2 of 1% rate as provided in this Act) for this additional annuity for not less than the equivalent of one full year. Such employee, however, shall make arrangement to pay to the fund a balance of such 1/2 of 1% contributions, based on his final salary, as will bring such 1/2 of 1% contributions, computed without interest, to the equivalent of or completion of one year's contributions.

Beginning with January, 1960, each employee shall contribute by means of salary deductions 1/2 of 1% of each salary payment, concurrently with and in addition to the employee contributions otherwise made for annuity purposes.

Each such additional contribution shall be credited to an account in the prior service annuity reserve, to be used, together with city contributions, to defray the cost of the

specified annuity increments. Any balance in such account at the beginning of each calendar year shall be credited with interest at the rate of 3% per annum.

Such additional employee contributions are not refundable, except to an employee who withdraws and applies for refund under this Article, and in cases where a term annuity becomes payable. In such cases his contributions shall be refunded, without interest, and charged to such account in the prior service annuity reserve.

(b-5) Notwithstanding any provision of this Section to the contrary:

(1) A person retiring after the effective date of this amendatory Act of the 98th General Assembly shall not be eligible for an annual increase under this Section until one full year after the date on which such annual increase otherwise would take effect under this Section.

(2) Except for persons eligible under subdivision (4) of this subsection for a minimum annual increase, there shall be no annual increase under this Section in years 2017, 2019, and 2025.

(3) In all other years, beginning January 1, 2015, the Fund shall pay an annual increase to persons eligible to receive one under this Section, in lieu of any other annual increase provided under this Section (but subject to the minimum increase under subdivision (4) of this subsection, if applicable) in an amount equal to the lesser of 3% or

one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1 of the person's last annual annuity amount prior to January 1, 2015, or if the person was not yet receiving an annuity on that date, then this calculation shall be based on his or her originally granted annual annuity amount.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100.

(4) A person is eligible under this subdivision (4) to receive a minimum annual increase in a particular year if: (i) the person is otherwise eligible to receive an annual increase under subdivision (3) of this subsection, and (ii) the annual amount of the annuity payable at the time of the increase, including all increases previously received, is less than $22,000.

Beginning January 1, 2015, for a person who is eligible under this subdivision (4) to receive a minimum annual increase in the year 2017, 2019, or 2025, the annual increase shall be 1% of the person's last annual annuity amount prior to January 1, 2015, or if the person was not yet receiving an annuity on that date, then 1% of his or

her originally granted annual annuity amount.

Beginning January 1, 2015, for any other year in which a person is eligible under this subdivision (4) to receive a minimum annual increase, the annual increase shall be as specified under subdivision (3), but not less than 1% of the person's last annual annuity amount prior to January 1, 2015 or, if the person was not yet receiving an annuity on that date, then not less than 1% of his or her originally granted annual annuity amount.

For the purposes of Section 1-103.1, this subsection (b-5) is applicable without regard to whether the employee was in active service on or after the effective date of this amendatory Act of the 98th General Assembly. This subsection (b-5) applies to any former employee who on or after the effective date of this amendatory Act of the 98th General Assembly is receiving a retirement annuity and is eligible for an automatic annual increase under this Section.

(Source: P.A. 92-599, eff. 6-28-02; 92-609, eff. 7-1-02; 93-654, eff. 1-16-04.)

(40 ILCS 5/8-137.1) (from Ch. 108 1/2, par. 8-137.1)

Sec. 8-137.1. Automatic increases in annuity for certain heretofore retired participants.

(a) A retired municipal employee who (i) ~~(a)~~ is receiving annuity based on a service credit of 20 or more years regardless of age at retirement or based on a service credit of

15 or more years with retirement at age 55 or over, and (ii) ~~(b)~~ does not qualify for the automatic increases in annuity provided for in Section 8-137 of this Article, and (iii) ~~(c)~~ elects to make a contribution to the Fund at a time and manner prescribed by the Retirement Board, of a sum equal to 1% of the amount of final monthly salary times the number of full years of service on which the annuity was based in those cases where the annuity was computed on the money purchase formula and in those cases in which the annuity was computed under the minimum annuity formula provisions of this Article a sum equal to 1% of the average monthly salary on which the annuity was based times such number of full years of service, shall have his original fixed and payable monthly amount of annuity increased in January of the year following the year in which he attains the age of 65 years, if such age of 65 years is attained in the year 1969 or later, by an amount equal to 1-1/2%, and by an equal additional 1-1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%, and beginning January of the year 1984 such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

Whenever the retired municipal employee receiving annuity has attained the age of 66 or more in 1969, he shall have such

annuity increased in January, 1970 by an amount equal to 1-1/2% multiplied by the number equal to the number of months of January elapsing from and including January of the year immediately following the year he attained the age of 65 if retired at or before age 65, or from and including January of the year immediately following the year of retirement if retired at an age greater than 65, to and including January, 1970, and by an equal additional 1-1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%, and beginning January of the year 1984 such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

(b) To defray the annual cost of such increases, the annual interest income of the Fund, accruing from investments held by the Fund, exclusive of gains or losses on sales or exchanges of assets during the year, over and above 4% a year, shall be used to the extent necessary and available to finance the cost of such increases for the following year, and such amount shall be transferred as of the end of each year, beginning with the year 1969, to a Fund account designated as the Supplementary Payment Reserve from the Investment and Interest Reserve set forth in Section 8-221. The sums contributed by annuitants as provided for in this Section shall also be placed in the aforesaid

Supplementary Payment Reserve and shall be applied and used for the purposes of such Fund account, together with the aforesaid interest.

In the event the monies in the Supplementary Payment Reserve in any year arising from: (1) the available interest income as defined hereinbefore and accruing in the preceding year above 4% a year and (2) the contributions by retired persons, as set forth hereinbefore, are insufficient to make the total payments to all persons estimated to be entitled to the annuity increases specified hereinbefore, then (3) any interest earnings over 4% a year beginning with the year 1969 which were not previously used to finance such increases and which were transferred to the Prior Service Annuity Reserve may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year, and such sums shall be transferred from the Prior Service Annuity Reserve.

In the event the total monies available in the Supplementary Payment Reserve from the preceding indicated sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the monies available to the total of the total payments for that year shall be paid to each person for that year.

The Fund shall be obligated for the payment of the increases in annuity as provided for in this Section only to

the extent that the assets for such purpose, as specified herein, are available.

(b-5) Notwithstanding any provision of this Section to the contrary:

(1) Except for persons eligible under subdivision (3) of this subsection for a minimum annual increase, there shall be no annual increase under this Section in years 2017, 2019, and 2025.

(2) In all other years, beginning January 1, 2015, the Fund shall pay an annual increase to persons eligible to receive one under this Section, in lieu of any other annual increase provided under this Section (but subject to the minimum increase under subdivision (3) of this subsection, if applicable) in an amount equal to the lesser of 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1 of the person's last annual annuity amount prior to January 1, 2015.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100.

(3) A person is eligible under this subdivision (3) to

receive a minimum annual increase in a particular year if: (i) the person is otherwise eligible to receive an annual increase under subdivision (2) of this subsection, and (ii) the annual amount of the annuity payable at the time of the increase, including all increases previously received, is less than $22,000.

Beginning January 1, 2015, for a person who is eligible under this subdivision (3) to receive a minimum annual increase in the year 2017, 2019, or 2025, the annual increase shall be 1% of the person's last annual annuity amount prior to January 1, 2015.

Beginning January 1, 2015, for any other year in which a person is eligible under this subdivision (3) to receive a minimum annual increase, the annual increase shall be as specified under subdivision (2), but not less than 1% of the person's last annual annuity amount prior to January 1, 2015.

For the purposes of Section 1-103.1, this subsection (b-5) is applicable without regard to whether the employee was in active service on or after the effective date of this amendatory Act of the 98th General Assembly. This subsection (b-5) applies to any former employee who on or after the effective date of this amendatory Act of the 98th General Assembly is receiving a retirement annuity and is eligible for an automatic annual increase under this Section.

(Source: P.A. 90-766, eff. 8-14-98.)

(40 ILCS 5/8-173) (from Ch. 108 1/2, par. 8-173)

Sec. 8-173. Financing; tax levy.

(a) Except as provided in subsection (f) of this Section, the city council of the city shall levy a tax annually upon all taxable property in the city at a rate that will produce a sum which, when added to the amounts deducted from the salaries of the employees or otherwise contributed by them and the amounts deposited under subsection (f), will be sufficient for the requirements of this Article, but which when extended will produce an amount not to exceed the greater of the following: (a) the sum obtained by the levy of a tax of .1093% of the value, as equalized or assessed by the Department of Revenue, of all taxable property within such city, or (b) the sum of $12,000,000. However any city in which a Fund has been established and in operation under this Article for more than 3 years prior to 1970 shall levy for the year 1970 a tax at a rate on the dollar of assessed valuation of all taxable property that will produce, when extended, an amount not to exceed 1.2 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar year 1968, and, for the year 1971 and 1972 such levy that will produce, when extended, an amount not to exceed 1.3 times the total amount of contributions made by employees to the Fund for annuity purposes in the calendar years 1969 and 1970, respectively; and for the year 1973 an amount not to exceed 1.365 times such

total amount of contributions made by employees for annuity purposes in the calendar year 1971; and for the year 1974 an amount not to exceed 1.430 times such total amount of contributions made by employees for annuity purposes in the calendar year 1972; and for the year 1975 an amount not to exceed 1.495 times such total amount of contributions made by employees for annuity purposes in the calendar year 1973; and for the year 1976 an amount not to exceed 1.560 times such total amount of contributions made by employees for annuity purposes in the calendar year 1974; and for the year 1977 an amount not to exceed 1.625 times such total amount of contributions made by employees for annuity purposes in the calendar year 1975; and for the year 1978 and each year thereafter through levy year 2014, such levy as will produce, when extended, an amount not to exceed the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2 years prior to the year for which the annual applicable tax is levied, multiplied by 1.690 for the years 1978 through 1998 and by 1.250 for the year 1999 and for each year thereafter through levy year 2014. Beginning in levy year 2015, and in each year thereafter, the levy shall not exceed the amount of the city's total required contribution to the Fund for the next payment year, as determined under subsection (a-5). For the purposes of this Section, the payment year is the year immediately following the levy year.

The tax shall be levied and collected in like manner with the general taxes of the city, and shall be exclusive of and in addition to the amount of tax the city is now or may hereafter be authorized to levy for general purposes under any laws which may limit the amount of tax which the city may levy for general purposes. The county clerk of the county in which the city is located, in reducing tax levies under the provisions of any Act concerning the levy and extension of taxes, shall not consider the tax herein provided for as a part of the general tax levy for city purposes, and shall not include the same within any limitation of the percent of the assessed valuation upon which taxes are required to be extended for such city.

Revenues derived from such tax shall be paid to the city treasurer of the city as collected and held by the city treasurer ~~him~~ for the benefit of the fund.

If the payments on account of taxes are insufficient during any year to meet the requirements of this Article, the city may issue tax anticipation warrants against the current tax levy.

The city may continue to use other lawfully available funds in lieu of all or part of the levy, as provided under subsection (f) of this Section.

(a-5) Beginning in payment year 2016, the city's required annual contribution to the Fund shall be the lesser of:

(i) (I) for payment years 2016 through 2055, the annual amount determined by the Fund to be equal to the greater of $0, or the sum of (1) the city's portion of the projected

normal cost for that fiscal year, plus (2) an amount determined on a level percentage of applicable employee payroll basis (reflecting any limits on individual participants' pay that apply for benefit and contribution purposes under this plan) that is sufficient to bring the total actuarial assets of the Fund up to 90% of the total actuarial liabilities of the Fund by the end of 2055. (II) For payment years after 2055, the annual amount determined by the Fund to be equal to the amount, if any, needed to bring the total actuarial assets of the Fund up to 90% of the total actuarial liabilities of the Fund as of the end of the year. In making the determinations under both (I) and (II), the actuarial calculations shall be determined under the entry age normal actuarial cost method, and any actuarial gains or losses from investment return incurred in a fiscal year shall be recognized in equal annual amounts over the 5-year period following the fiscal year; or

(ii) for payment year 2016, 1.85 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2013; for payment year 2017, 2.15 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2014; for payment year 2018, 2.45 times the total amount of contributions made by or on behalf of employees to the Fund for annuity

purposes in the calendar year 2015; for payment year 2019, 2.75 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2016; for payment year 2020, 3.05 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2017.

However, beginning in the earlier of payment year 2021 or the first payment year in which the annual contribution amount calculated under subdivision (i) is less than the contribution amount calculated under subdivision (ii), and in each year thereafter, the city's required annual contribution to the Fund shall be determined under subdivision (i).

The city's required annual contribution to the Fund may be paid with any available funds and shall be paid by the city to the city treasurer. The city treasurer shall collect and hold those funds for the benefit of the Fund.

(a-10) If the city fails to transmit to the Fund contributions required of it under this Article by December 31st of the year in which such contributions are due, the Fund may, after giving notice to the city, certify to the State Comptroller the amounts of the delinquent payments, and the Comptroller must, beginning in payment year 2016, deduct and deposit into the Fund the certified amounts or a portion of those amounts from the following proportions of grants of State funds to the city:

(1) in payment year 2016, one-third of the total amount of any grants of State funds to the city;

(2) in payment year 2017, two-thirds of the total amount of any grants of State funds to the city; and

(3) in payment year 2018 and each payment year thereafter, the total amount of any grants of State funds to the city.

The State Comptroller may not deduct from any grants of State funds to the city more than the amount of delinquent payments certified to the State Comptroller by the Fund.

(b) On or before July 1 ~~January 10~~, annually, the board shall certify to ~~notify~~ the city council the annual amounts required under ~~of the requirements of~~ this Article, for which ~~that~~ the tax herein provided may ~~shall~~ be levied for the following ~~that current~~ year. The board shall compute the amounts necessary to be credited to the reserves established and maintained as herein provided, and shall make an annual determination of the amount of the required city contributions, and certify the results thereof to the city council.

(c) In respect to employees of the city who are transferred to the employment of a park district by virtue of the "Exchange of Functions Act of 1957", the corporate authorities of the park district shall annually levy a tax upon all the taxable property in the park district at such rate per cent of the value of such property, as equalized or assessed by the Department of Revenue, as shall be sufficient, when added to

the amounts deducted from their salaries and otherwise contributed by them to provide the benefits to which they and their dependents and beneficiaries are entitled under this Article. The city shall not levy a tax hereunder in respect to such employees.

The tax so levied by the park district shall be in addition to and exclusive of all other taxes authorized to be levied by the park district for corporate, annuity fund, or other purposes. The county clerk of the county in which the park district is located, in reducing any tax levied under the provisions of any act concerning the levy and extension of taxes shall not consider such tax as part of the general tax levy for park purposes, and shall not include the same in any limitation of the per cent of the assessed valuation upon which taxes are required to be extended for the park district. The proceeds of the tax levied by the park district, upon receipt by the district, shall be immediately paid over to the city treasurer of the city for the uses and purposes of the fund.

The various sums to be contributed by the city and park district and allocated for the purposes of this Article, and any interest to be contributed by the city, shall be derived from the revenue from the taxes authorized in this Section or otherwise as expressly provided in this Section.

If it is not possible or practicable for the city to make contributions for age and service annuity and widow's annuity at the same time that employee contributions are made for such

purposes, such city contributions shall be construed to be due and payable as of the end of the fiscal year for which the tax is levied and shall accrue thereafter with interest at the effective rate until paid.

(d) With respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as amended (P.L. 93-203, 87 Stat. 839, P.L. 93-567, 88 Stat. 1845), hereinafter referred to as CETA, subsequent to October 1, 1978, and in instances where the board has elected to establish a manpower program reserve, the board shall compute the amounts necessary to be credited to the manpower program reserves established and maintained as herein provided, and shall make a periodic determination of the amount of required contributions from the City to the reserve to be reimbursed by the federal government in accordance with rules and regulations established by the Secretary of the United States Department of Labor or his designee, and certify the results thereof to the City Council. Any such amounts shall become a credit to the City and will be used to reduce the amount which the City would otherwise contribute during succeeding years for all employees.

(e) In lieu of establishing a manpower program reserve with respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as authorized by subsection (d), the board may elect to establish a special municipality contribution rate for all such

employees. If this option is elected, the City shall contribute to the Fund from federal funds provided under the Comprehensive Employment and Training Act program at the special rate so established and such contributions shall become a credit to the City and be used to reduce the amount which the City would otherwise contribute during succeeding years for all employees.

(f) In lieu of levying all or a portion of the tax required under this Section in any year, the city may deposit with the city treasurer no later than March 1 of that year for the benefit of the fund, to be held in accordance with this Article, an amount that, together with the taxes levied under this Section for that year, is not less than the amount of the city contributions for that year as certified by the board to the city council. The deposit may be derived from any source legally available for that purpose, including, but not limited to, the proceeds of city borrowings. The making of a deposit shall satisfy fully the requirements of this Section for that year to the extent of the amounts so deposited. Amounts deposited under this subsection may be used by the fund for any of the purposes for which the proceeds of the tax levied by the city under this Section may be used, including the payment of any amount that is otherwise required by this Article to be paid from the proceeds of that tax.

(Source: P.A. 90-31, eff. 6-27-97; 90-655, eff. 7-30-98; 90-766, eff. 8-14-98.)

(40 ILCS 5/8-173.1 new)

Sec. 8-173.1. Funding Obligation.

(a) Beginning January 1, 2015, the city shall be obligated to contribute to the Fund in each fiscal year an amount not less than the amount determined annually under subsection (a-5) of Section 8-173 of this Code. Notwithstanding any other provision of law, if the city fails to pay the amount guaranteed under this Section on or before December 31 of the year in which such amount is due, the retirement board may bring a mandamus action in the Circuit Court of Cook County to compel the city to make the required payment, irrespective of other remedies that may be available to the Fund. The obligations and causes of action created under this Section shall be in addition to any other right or remedy otherwise accorded by common law or State or federal law, and nothing in this Section shall be construed to deny, abrogate, impair, or waive any such common law or statutory right or remedy.

(b) In ordering the city to make the required payment, the court may order a reasonable payment schedule to enable the city to make the required payment without significantly imperiling the public health, safety, or welfare. Any payments required to be made by the city pursuant to this Section are expressly subordinated to the payment of the principal, interest, premium, if any, and other payments on or related to any bonded debt obligation of the city, either currently

outstanding or to be issued, for which the source of repayment or security thereon is derived directly or indirectly from any funds collected or received by the city or collected or received on behalf of the city. Payments on such bonded obligations include any statutory fund transfers or other prefunding mechanisms or formulas set forth, now or hereafter, in State law, city ordinance, or bond indentures, into debt service funds or accounts of the city related to such bonded obligations, consistent with the payment schedules associated with such obligations.

(40 ILCS 5/8-174) (from Ch. 108 1/2, par. 8-174)

Sec. 8-174. Contributions for age and service annuities for present employees and future entrants.

(a) Beginning on the effective date and prior to July 1, 1947, 3 1/4%; and beginning on July 1, 1947 and prior to July 1, 1953, 5%; and beginning July 1, 1953, and prior to January 1, 1972, 6%; and beginning January 1, 1972, 6.5%; and beginning January 1, 2015, and prior to January 1, 2016, 7.0%; and beginning January 1, 2016, and prior to January 1, 2017, 7.5%; and, beginning January 1, 2017, and prior to January 1, 2018, 8.0%; and beginning January 1, 2018, and prior to January 1, 2019, 8.5%; and beginning January 1, 2019, and thereafter, 9.0% ~~6 1/2%~~ of each payment of the salary of each present employee and future entrant shall be contributed to the fund as a deduction from salary for age and service annuity; provided,

however, that beginning with the first pay period on or after the date when the funded ratio of the Fund is first determined to have reached the 90% funding goal set forth in subsection (a-5) of Section 8-173, and each pay period thereafter for as long as the Fund maintains a funding ratio of 90% or more, employee contributions shall be 7.75% of salary for the age and service annuity. If the funding ratio falls below 90%, then employee contributions for the age and service annuity shall revert to 9.0% of salary until such time as the Fund once again is determined to have reached a funding ratio of at least 90%, at which time employee contributions of 7.75% shall resume for the age and service annuity.

Notwithstanding Section 1-103.1, the changes to this Section made by this amendatory Act of the 98th General Assembly apply regardless of whether the employee was in active service on or after the effective date of this amendatory Act.

Such deductions beginning on the effective date and prior to July 1, 1947 shall be made for a future entrant while he is in the service until he attains age 65 and for a present employee while he is in the service until the amount so deducted from his salary with the amount deducted from his salary or paid by him according to law to any municipal pension fund in force on the effective date with interest on both such amounts at 4% per annum equals the sum that would have been to his credit from sums deducted from his salary if deductions at the rate herein stated had been made during his entire service

until he attained age 65 with interest at 4% per annum for the period subsequent to his attainment of age 65. Such deductions beginning July 1, 1947 shall be made and continued for employees while in the service.

(b) Concurrently with each employee contribution beginning on the effective date and prior to July 1, 1947 the city shall contribute 5 3/4%; and beginning on July 1, 1947 and prior to July 1, 1953, 7%; and beginning July 1, 1953, 6% of each payment of such salary until the employee attains age 65. Notwithstanding any provision of this subsection (b) to the contrary, the city shall not make a contribution for any credit established by an employee under subsection (b) of Section 8-138.4.

(c) Each employee contribution made prior to the date the age and service annuity for an employee is fixed and each corresponding city contribution shall be credited to the employee and allocated to the account of the employee for whose benefit it is made.

(Source: P.A. 93-654, eff. 1-16-04.)

(40 ILCS 5/8-174.2 new)

Sec. 8-174.2. Use of contributions for health care subsidies. Except as may be required pursuant to Sections 8-164.1 and 8-164.2 of this Code, the Fund shall not use any contribution received by the Fund under this Article to provide a subsidy for the cost of participation in a retiree health

care program.

(40 ILCS 5/11-134.1) (from Ch. 108 1/2, par. 11-134.1)

Sec. 11-134.1. Automatic increase in annuity.

(a) An employee who retired or retires from service after December 31, 1963, and before January 1, 1987, having attained age 60 or more, shall, in the month of January of the year following the year in which the first anniversary of retirement occurs, have the amount of his then fixed and payable monthly annuity increased by 1 1/2%, and such first fixed annuity as granted at retirement increased by a further 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning January, 1984, such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article. An employee who retires on annuity after December 31, 1963 and before January 1, 1987, but prior to age 60, shall receive such increases beginning with January of the year immediately following the year in which he attains the age of 60 years.

An employee who retires from service on or after January 1, 1987 shall, upon the first annuity payment date following the first anniversary of the date of retirement, or upon the first annuity payment date following attainment of age 60, whichever

occurs later, have his then fixed and payable monthly annuity increased by 3%, and such annuity shall be increased by an additional 3% of the original fixed annuity on the same date each year thereafter. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

(a-5) Notwithstanding the provisions of subsection (a), upon the first annuity payment date following (1) the third anniversary of retirement, (2) the attainment of age 53, or (3) January 1, 2002, whichever occurs latest, the monthly annuity of an employee who retires on annuity prior to the attainment of age 60 and has not received an increase under subsection (a) shall be increased by 3%, and the annuity shall be increased by an additional 3% of the current payable monthly annuity, including any increases previously granted under this Article, on the same date each year thereafter. The increases provided under this subsection are in lieu of the increases provided in subsection (a).

(a-6) Notwithstanding the provisions of subsections (a) and (a-5), for all calendar years following the year in which this amendatory Act of the 93rd General Assembly takes effect, an increase in annuity under this Section that would otherwise take effect at any time during the year shall instead take effect in January of that year.

(b) Subsections (a), (a-5), and (a-6) are not applicable to

an employee retiring and receiving a term annuity, as defined in this Article, nor to any otherwise qualified employee who retires before he shall have made employee contributions (at the 1/2 of 1% rate as hereinafter provided) for the purposes of this additional annuity for not less than the equivalent of one full year. Such employee, however, shall make arrangement to pay to the fund a balance of such 1/2 of 1% contributions, based on his final salary, as will bring such 1/2 of 1% contributions, computed without interest, to the equivalent of or completion of one year's contributions.

Beginning with the month of January, 1964, each employee shall contribute by means of salary deductions 1/2 of 1% of each salary payment, concurrently with and in addition to the employee contributions otherwise made for annuity purposes.

Each such additional employee contribution shall be credited to an account in the prior service annuity reserve, to be used, together with city contributions, to defray the cost of the specified annuity increments. Any balance as of the beginning of each calendar year existing in such account shall be credited with interest at the rate of 3% per annum.

Such employee contributions shall not be subject to refund, except to an employee who resigns or is discharged and applies for refund under this Article, and also in cases where a term annuity becomes payable.

In such cases the employee contributions shall be refunded him, without interest, and charged to the aforementioned

account in the prior service annuity reserve.

(b-5) Notwithstanding any provision of this Section to the contrary:

(1) A person retiring after the effective date of this amendatory Act of the 98th General Assembly shall not be eligible for an annual increase under this Section until one full year after the date on which such annual increase otherwise would take effect under this Section.

(2) Except for persons eligible under subdivision (4) of this subsection for a minimum annual increase, there shall be no annual increase under this Section in years 2017, 2019, and 2025.

(3) In all other years, beginning January 1, 2015, the Fund shall pay an annual increase to persons eligible to receive one under this Section, in lieu of any other annual increase provided under this Section (but subject to the minimum increase under subdivision (4) of this subsection, if applicable) in an amount equal to the lesser of 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1 of the person's last annual annuity amount prior to January 1, 2015, or if the person was not yet receiving an annuity on that date, then this calculation shall be based on his or her originally granted annual annuity amount.

For the purposes of this Section, "consumer price

index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100.

(4) A person is eligible under this subdivision (4) to receive a minimum annual increase in a particular year if: (i) the person is otherwise eligible to receive an annual increase under subdivision (3) of this subsection, and (ii) the annual amount of the annuity payable at the time of the increase, including all increases previously received, is less than $22,000.

Beginning January 1, 2015, for a person who is eligible under this subdivision (4) to receive a minimum annual increase in the year 2017, 2019, or 2025, the annual increase shall be 1% of the person's last annual annuity amount prior to January 1, 2015, or if the person was not yet receiving an annuity on that date, then 1% of his or her originally granted annual annuity amount.

Beginning January 1, 2015, for any other year in which a person is eligible under this subdivision (4) to receive a minimum annual increase, the annual increase shall be as specified under subdivision (3), but not less than 1% of the person's last annual annuity amount prior to January 1, 2015 or, if the person was not yet receiving an annuity on that date, then not less than 1% of his or her originally

granted annual annuity amount.

For the purposes of Section 1-103.1, this subsection (b-5) is applicable without regard to whether the employee was in active service on or after the effective date of this amendatory Act of the 98th General Assembly. This subsection (b-5) applies to any former employee who on or after the effective date of this amendatory Act of the 98th General Assembly is receiving a retirement annuity and is eligible for an automatic annual increase under this Section.

(Source: P.A. 92-599, eff. 6-28-02; 92-609, eff. 7-1-02; 93-654, eff. 1-16-04.)

(40 ILCS 5/11-134.3) (from Ch. 108 1/2, par. 11-134.3)

Sec. 11-134.3. Automatic increases in annuity for certain heretofore retired participants.

(a) A retired employee who (i) ~~(a)~~ is receiving annuity based on a service credit of 20 or more years regardless of age at retirement or based on a service credit of 15 or more years with retirement at age 55 or over, and (ii) ~~(b)~~ does not qualify for the automatic increases in annuity provided for in Section 11-134.1 of this Article, and (iii) ~~(c)~~ elects to make a contribution to the Fund at a time and manner prescribed by the Retirement Board, of a sum equal to 1% of the amount of final monthly salary times the number of full years of service on which the annuity was based in those cases where the annuity was computed on the money purchase formula, and in those cases

in which the annuity was computed under the minimum annuity formula provisions of this Article a sum equal to 1% of the average monthly salary on which the annuity was based times such number of full years of service, shall have his original fixed and payable monthly amount of annuity increased in January of the year following the year in which he attains the age of 65 years, if such age of 65 years is attained in the year 1969 or later, by an amount equal to 1 1/2%, and by an equal additional 1 1/2% in January of each year thereafter. Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning January, 1984, such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

In those cases in which the retired employee receiving annuity has attained the age of 66 or more years in the year 1969, he shall have such annuity increased in January of the year 1970 by an amount equal to 1 1/2% multiplied by the number equal to the number of months of January elapsing from and including January of the year immediately following the year he attained the age of 65 years if retired at or prior to age 65, or from and including January of the year immediately following the year of retirement if retired at an age greater than 65 years, to and including January of the year 1970, and by an equal additional 1 1/2% in January of each year thereafter.

Beginning with January of the year 1972, such increases shall be at the rate of 2% in lieu of the aforesaid specified 1 1/2%. Beginning January, 1984, such increases shall be at the rate of 3%. Beginning in January of 1999, such increases shall be at the rate of 3% of the currently payable monthly annuity, including any increases previously granted under this Article.

(b) To defray the annual cost of such increases, the annual interest income of the Fund, accruing from investments held by the Fund, exclusive of gains or losses on sales or exchanges of assets during the year, over and above 4% a year, shall be used to the extent necessary and available to finance the cost of such increases for the following year, and such amount shall be transferred as of the end of each year, beginning with the year 1969, to a Fund account designated as the Supplementary Payment Reserve from the Investment and Interest Reserve set forth in Sec. 11-210. The sums contributed by annuitants as provided for in this Section shall also be placed in the aforesaid Supplementary Payment Reserve and shall be applied for and used for the purposes of such Fund account, together with the aforesaid interest.

In the event the monies in the Supplementary Payment Reserve in any year arising from: (1) the available interest income as defined hereinbefore and accruing in the preceding year above 4% a year and (2) the contributions by retired persons, as set forth hereinbefore, are insufficient to make the total payments to all persons estimated to be entitled to

the annuity increases specified hereinbefore, then (3) any interest earnings over 4% a year beginning with the year 1969 which were not previously used to finance such increases and which were transferred to the Prior Service Annuity Reserve may be used to the extent necessary and available to provide sufficient funds to finance such increases for the current year, and such sums shall be transferred from the Prior Service Annuity Reserve.

In the event the total monies available in the Supplementary Payment Reserve from the preceding indicated sources are insufficient to make the total payments to all persons entitled to such increases for the year, a proportionate amount computed as the ratio of the monies available to the total of the total payments for that year shall be paid to each person for that year.

The Fund shall be obligated for the payment of the increases in annuity as provided for in this Section only to the extent that the assets for such purpose, as specified herein, are available.

(b-5) Notwithstanding any provision of this Section to the contrary:

(1) Except for persons eligible under subdivision (3) of this subsection for a minimum annual increase, there shall be no annual increase under this Section in years 2017, 2019, and 2025.

(2) In all other years, beginning January 1, 2015, the

Fund shall pay an annual increase to persons eligible to receive one under this Section, in lieu of any other annual increase provided under this Section (but subject to the minimum increase under subdivision (3) of this subsection, if applicable) in an amount equal to the lesser of 3% or one-half the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the September preceding each November 1 of the person's last annual annuity amount prior to January 1, 2015.

For the purposes of this Section, "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100.

(3) A person is eligible under this subdivision (3) to receive a minimum annual increase in a particular year if: (i) the person is otherwise eligible to receive an annual increase under subdivision (2) of this subsection, and (ii) the annual amount of the annuity payable at the time of the increase, including all increases previously received, is less than $22,000.

Beginning January 1, 2015, for a person who is eligible under this subdivision (3) to receive a minimum annual increase in the year 2017, 2019, or 2025, the annual

increase shall be 1% of the person's last annual annuity amount prior to January 1, 2015.

Beginning January 1, 2015, for any other year in which a person is eligible under this subdivision (3) to receive a minimum annual increase, the annual increase shall be as specified under subdivision (2), but not less than 1% of the person's last annual annuity amount prior to January 1, 2015.

For the purposes of Section 1-103.1, this subsection (b-5) is applicable without regard to whether the employee was in active service on or after the effective date of this amendatory Act of the 98th General Assembly. This subsection (b-5) applies to any former employee who on or after the effective date of this amendatory Act of the 98th General Assembly is receiving a retirement annuity and is eligible for an automatic annual increase under this Section.

(Source: P.A. 90-766, eff. 8-14-98.)

(40 ILCS 5/11-169) (from Ch. 108 1/2, par. 11-169)

Sec. 11-169. Financing; tax levy.

(a) Except as provided in subsection (f) of this Section, the city council of the city shall levy a tax annually upon all taxable property in the city at the rate that will produce a sum which, when added to the amounts deducted from the salaries of the employees or otherwise contributed by them and the amounts deposited under subsection (f), will be sufficient for

the requirements of this Article. For the years prior to the year 1950 the tax rate shall be as provided for under "The 1935 Act". Beginning with the year 1950 to and including the year 1969 such tax shall be not more than .036% annually of the value, as equalized or assessed by the Department of Revenue, of all taxable property within such city. Beginning with the year 1970 and each year thereafter through levy year 2014, the city shall levy a tax annually at a rate on the dollar of the value, as equalized or assessed by the Department of Revenue of all taxable property within such city that will produce, when extended, not to exceed an amount equal to the total amount of contributions by the employees to the fund made in the calendar year 2 years prior to the year for which the annual applicable tax is levied, multiplied by 1.1 for the years 1970, 1971 and 1972; 1.145 for the year 1973; 1.19 for the year 1974; 1.235 for the year 1975; 1.280 for the year 1976; 1.325 for the year 1977; 1.370 for the years 1978 through 1998; and 1.000 for the year 1999 and for each year thereafter through levy year 2014. Beginning in levy year 2015, and in each year thereafter, the levy shall not exceed the amount of the city's total required contribution to the Fund for the next payment year, as determined under subsection (a-5). For the purposes of this Section, the payment year is the year immediately following the levy year.

The tax shall be levied and collected in like manner with the general taxes of the city, and shall be exclusive of and in

addition to the amount of tax the city is now or may hereafter be authorized to levy for general purposes under any laws which may limit the amount of tax which the city may levy for general purposes. The county clerk of the county in which the city is located, in reducing tax levies under the provisions of any Act concerning the levy and extension of taxes, shall not consider the tax herein provided for as a part of the general tax levy for city purposes, and shall not include the same within any limitation of the per cent of the assessed valuation upon which taxes are required to be extended for such city.

Revenues derived from such tax shall be paid to the city treasurer of the city as collected and held by the city treasurer ~~him~~ for the benefit of the fund.

If the payments on account of taxes are insufficient during any year to meet the requirements of this Article, the city may issue tax anticipation warrants against the current tax levy.

The city may continue to use other lawfully available funds in lieu of all or part of the levy, as provided under subsection (f) of this Section.

(a-5) Beginning in payment year 2016, the city's required annual contribution to the Fund shall be the lesser of:

(i) (I) for payment years 2016 through 2055, the annual amount determined by the Fund to be equal to the greater of $0, or the sum of (1) the City's portion of the projected normal cost for that fiscal year, plus (2) an amount determined on a level percentage of applicable employee

payroll basis (reflecting any limits on individual participants' pay that apply for benefit and contribution purposes under this plan) that is sufficient to bring the total actuarial assets of the Fund up to 90% of the total actuarial liabilities of the Fund by the end of 2055. (II) For payment years after 2055, the annual amount determined by the Fund to be equal to the amount, if any, needed to bring the total actuarial assets of the Fund up to 90% of the total actuarial liabilities of the Fund as of the end of the year. In making the determinations under both (I) and (II), the actuarial calculations shall be determined under the entry age normal actuarial cost method, and any actuarial gains or losses from investment return incurred in a fiscal year shall be recognized in equal annual amounts over the 5-year period following the fiscal year; or

(ii) for payment year 2016, 1.60 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2013; for payment year 2017, 1.90 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2014; for payment year 2018, 2.20 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2015; for payment year 2019, 2.50 times the total amount of contributions made by or on

behalf of employees to the Fund for annuity purposes in the calendar year 2016; for payment year 2020, 2.80 times the total amount of contributions made by or on behalf of employees to the Fund for annuity purposes in the calendar year 2017.

However, beginning in the earlier of payment year 2021 or the first payment year in which the annual contribution amount calculated under subdivision (i) is less than the contribution amount calculated under subdivision (ii), and in each year thereafter, the city's required annual contribution to the Fund shall be determined under subdivision (i).

The city's required annual contribution to the Fund may be paid with any available funds and shall be paid by the city to the city treasurer. The city treasurer shall collect and hold those funds for the benefit of the Fund.

(a-10) If the city fails to transmit to the Fund contributions required of it under this Article by December 31st of the year in which such contributions are due, the Fund may, after giving notice to the city, certify to the State Comptroller the amounts of the delinquent payments, and the Comptroller must, beginning in payment year 2016, deduct and deposit into the Fund the certified amounts or a portion of those amounts from the following proportions of grants of State funds to the city:

(1) in payment year 2016, one-third of the total amount of any grants of State funds to the city;

(2) in payment year 2017, two-thirds of the total amount of any grants of State funds to the city; and

(3) in payment year 2018 and each payment year thereafter, the total amount of any grants of State funds to the city.

The State Comptroller may not deduct from any grants of State funds to the city more than the amount of delinquent payments certified to the State Comptroller by the Fund.

(b) On or before July 1 ~~January 10~~, annually, the board shall certify to ~~notify~~ the city council the annual amounts required under ~~of the requirement of~~ this Article, for which ~~that~~ the tax herein provided may ~~shall~~ be levied for the following ~~that current~~ year. The board shall compute the amounts necessary for the purposes of this fund to be credited to the reserves established and maintained as herein provided, and shall make an annual determination of the amount of the required city contributions; and certify the results thereof to the city council.

(c) In respect to employees of the city who are transferred to the employment of a park district by virtue of "Exchange of Functions Act of 1957" the corporate authorities of the park district shall annually levy a tax upon all the taxable property in the park district at such rate per cent of the value of such property, as equalized or assessed by the Department of Revenue, as shall be sufficient, when added to the amounts deducted from their salaries and otherwise

contributed by them, to provide the benefits to which they and their dependents and beneficiaries are entitled under this Article. The city shall not levy a tax hereunder in respect to such employees.

The tax so levied by the park district shall be in addition to and exclusive of all other taxes authorized to be levied by the park district for corporate, annuity fund, or other purposes. The county clerk of the county in which the park district is located, in reducing any tax levied under the provisions of any Act concerning the levy and extension of taxes shall not consider such tax as part of the general tax levy for park purposes, and shall not include the same in any limitation of the per cent of the assessed valuation upon which taxes are required to be extended for the park district. The proceeds of the tax levied by the park district, upon receipt by the district, shall be immediately paid over to the city treasurer of the city for the uses and purposes of the fund.

The various sums to be contributed by the city and allocated for the purposes of this Article, and any interest to be contributed by the city, shall be taken from the revenue derived from the taxes authorized in this Section, and no money of such city derived from any source other than the levy and collection of those taxes or the sale of tax anticipation warrants in accordance with the provisions of this Article shall be used to provide revenue for this Article, except as expressly provided in this Section.

If it is not possible for the city to make contributions for age and service annuity and widow's annuity concurrently with the employee's contributions made for such purposes, such city shall make such contributions as soon as possible and practicable thereafter with interest thereon at the effective rate to the time they shall be made.

(d) With respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as amended (P.L. 93-203, 87 Stat. 839, P.L. 93-567, 88 Stat. 1845), hereinafter referred to as CETA, subsequent to October 1, 1978, and in instances where the board has elected to establish a manpower program reserve, the board shall compute the amounts necessary to be credited to the manpower program reserves established and maintained as herein provided, and shall make a periodic determination of the amount of required contributions from the City to the reserve to be reimbursed by the federal government in accordance with rules and regulations established by the Secretary of the United States Department of Labor or his designee, and certify the results thereof to the City Council. Any such amounts shall become a credit to the City and will be used to reduce the amount which the City would otherwise contribute during succeeding years for all employees.

(e) In lieu of establishing a manpower program reserve with respect to employees whose wages are funded as participants under the Comprehensive Employment and Training Act of 1973, as

authorized by subsection (d), the board may elect to establish a special municipality contribution rate for all such employees. If this option is elected, the City shall contribute to the Fund from federal funds provided under the Comprehensive Employment and Training Act program at the special rate so established and such contributions shall become a credit to the City and be used to reduce the amount which the City would otherwise contribute during succeeding years for all employees.

(f) In lieu of levying all or a portion of the tax required under this Section in any year, the city may deposit with the city treasurer no later than March 1 of that year for the benefit of the fund, to be held in accordance with this Article, an amount that, together with the taxes levied under this Section for that year, is not less than the amount of the city contributions for that year as certified by the board to the city council. The deposit may be derived from any source legally available for that purpose, including, but not limited to, the proceeds of city borrowings. The making of a deposit shall satisfy fully the requirements of this Section for that year to the extent of the amounts so deposited. Amounts deposited under this subsection may be used by the fund for any of the purposes for which the proceeds of the tax levied by the city under this Section may be used, including the payment of any amount that is otherwise required by this Article to be paid from the proceeds of that tax.

(Source: P.A. 90-31, eff. 6-27-97; 90-766, eff. 8-14-98.)

(40 ILCS 5/11-169.1 new)

Sec. 11-169.1. Funding Obligation.

(a) Beginning January 1, 2015, the city shall be obligated to contribute to the Fund in each fiscal year an amount not less than the amount determined annually under subsection (a-5) of Section 11-169 of this Code. Notwithstanding any other provision of law, if the city fails to pay the amount guaranteed under this Section on or before December 31 of the year in which such amount is due, the retirement board may bring a mandamus action in the Circuit Court of Cook County to compel the city to make the required payment, irrespective of other remedies that may be available to the Fund. The obligations and causes of action created under this Section shall be in addition to any other right or remedy otherwise accorded by common law or State or federal law, and nothing in this Section shall be construed to deny, abrogate, impair, or waive any such common law or statutory right or remedy.

(b) In ordering the city to make the required payment, the court may order a reasonable payment schedule to enable the city to make the required payment without significantly imperiling the public health, safety, or welfare. Any payments required to be made by the city pursuant to this Section are expressly subordinated to the payment of the principal, interest, premium, if any, and other payments on or related to

any bonded debt obligation of the city, either currently outstanding or to be issued, for which the source of repayment or security thereon is derived directly or indirectly from any funds collected or received by the city or collected or received on behalf of the city. Payments on such bonded obligations include any statutory fund transfers or other prefunding mechanisms or formulas set forth, now or hereafter, in State law, city ordinance, or bond indentures, into debt service funds or accounts of the city related to such bonded obligations, consistent with the payment schedules associated with such obligations.

(40 ILCS 5/11-170) (from Ch. 108 1/2, par. 11-170)

Sec. 11-170. Contributions for age and service annuities for present employees, future entrants and re-entrants.

(a) Beginning on the effective date and prior to July 1, 1947, 3 1/4%; and beginning on July 1, 1947 and prior to July 1, 1953, 5%; and beginning July 1, 1953 and prior to January 1, 1972, 6%; and beginning January 1, 1972, 6.5%; and beginning January 1, 2015, and prior to January 1, 2016, 7.0%; and beginning January 1, 2016, and prior to January 1, 2017, 7.5%; and, beginning January 1, 2017, and prior to January 1, 2018, 8.0%; and beginning January 1, 2018, and prior to January 1, 2019, 8.5%; and beginning January 1, 2019, and thereafter, 9.0% ~~6 1/2%~~ of each payment of the salary of each present employee, future entrant and re-entrant shall be contributed to the fund

as a deduction from salary for age and service annuity; provided, however, that beginning with the first pay period on or after the date when the funded ratio of the Fund is first determined to have reached the 90% funding goal set forth in subsection (a-5) of Section 11-169 of this Code, and each pay period thereafter for as long as the Fund maintains a funding ratio of 90% or more, employee contributions shall be 7.75% of salary for the age and service annuity. If the funding ratio falls below 90%, then employee contributions for the age and service annuity shall revert to 9.0% of salary until such time as the Fund once again is determined to have reached a funding ratio of at least 90%, at which time employee contributions of 7.75% shall resume for the age and service annuity. Such deductions beginning on the effective date and prior to June 30, 1947, inclusive shall be made for a future entrant while he is in service until he attains age 65, and for a present employee while he is in service until the amount so deducted from his salary with interest at the rate of 4% per annum shall be equal to the sum which would have accumulated to his credit from sums deducted from his salary if deductions at the rate herein stated had been made during his entire service until he attained age 65 with interest at 4% per annum for the period subsequent to his attainment of age 65. Such deductions beginning July 1, 1947 shall be made and continued for employees while in the service.

Notwithstanding Section 1-103.1, the changes to this

Section made by this amendatory Act of the 98th General Assembly apply regardless of whether the employee was in active service on or after the effective date of this amendatory Act.

(b) Concurrently with each employee contribution, the city shall contribute beginning on the effective date and prior to July 1, 1947, 5 3/4%; and beginning July 1, 1947 and prior to July 1, 1953, 7%; and beginning July 1, 1953, 6% of each payment of such salary until the employee attains age 65.

(c) Each employee contribution made prior to the date age and service annuity for an employee is fixed and each corresponding city contribution shall be allocated to the account of and credited to the employee for whose benefit it is made.

(Source: P.A. 81-1536.)

(40 ILCS 5/11-179.1 new)

Sec. 11-179.1. Use of contributions for health care subsidies. Except as may be required pursuant to Sections 11-160.1 and 11-160.2 of this Code, the Fund shall not use any contribution received by the Fund under this Article to provide a subsidy for the cost of participation in a retiree health care program.

Section 90. The State Mandates Act is amended by adding Section 8.38 as follows:

(30 ILCS 805/8.38 new)

Sec. 8.38. Exempt mandate. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of the 98th General Assembly.

Section 93. Inseverability and severability. The provisions of this amendatory Act of 2014 set forth in Sections 1-160, 8-137, 8-137.1, 8-173, 8-173.1, 8-174, 11-134.1, 11-134.3, 11-169, 11-169.1, and 11-170 of the Illinois Pension Code are mutually dependent and inseverable. If any of those provisions is held invalid other than as applied to a particular person or circumstance, then all of those provisions are invalid. The remaining provisions of this Act are severable under Section 1.31 of the Statute on Statutes, and are not mutually dependent upon the provisions set forth in any other Section of this Act.

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Section 99. Effective date. This Act takes effect upon

becoming law.

EXHIBIT 2

HALL OF THE HOUSE OF REPRESENTATIVES
OLD STATE CAPITOL, SPRINGFIELD, ILLINOIS

TUESDAY, JULY 21, 1970, 10:00 A.M.
No. 89

PRESIDENT WITWER: The Convention will come to order. We're privileged this morning to have a distinguished clergyman and a close friend of Wendell Durr, our distinguished fellow delegate, who will deliver the invocation. I have asked Mr. Durr if he will present the Reverend Zollars to you.

MR. DURR: Thank you, Mr. President. Ladies and gentlemen, Delegate Johnsen—with an "e"—and I take some notice of the fact that we occasionally need reinforcements here at the Convention, and we take pleasure in introducing to you one of the Lord's delegates from the 53rd District, Reverend Roger Zollars, late of Oak Park, so he represents all areas of the state. Reverend Zollars?

REVEREND ROGER ZOLLARS: Let us pray. God of history, God of humanity, God of the present moment, God of generations yet unborn, be with us as we plan constructively for our common life.

We are grateful for the many fascinating dependables of this life, Our Father—our mobile bodies, our frustrating and powerful communication, our infinitely changing personalities, all the physical resources of the land of Illinois and the universe, and our hunger for eternity.

God of all people, help us to be decent to one another as we live in daily encounter here. As we write law for those we will never see, inspire us—even us—God of all power. Make us better than ourselves as we attempt to codify the past and anticipate the future.

Stare at us, God, stare at us through the mirror every morning; stare at us in the eyes of our colleagues here; stare at us through the portraits and sculptures of those who have served you here in this historic sanctuary before this Constitutional Convention convened. Stare at us in the faces of different pigment, of old and babe, blue-collar and long-hair, male and female.

Remind us often, Father of all, that ours is a very sacred opportunity, and we are very sin-blinded persons.

We offer our lives in this prayer, in the spirit of our Lord. Amen.

PRESIDENT WITWER: Thank you so much; that was a very fine prayer. I do want to thank you.

REVEREND ZOLLARS: Thank you, Mr. President.

PRESIDENT WITWER: We are very grateful to Reverend Zollars for that wonderful and inspiring prayer that he delivered this morning. We hope that he will stay with us as long as possible during this session and that he will enjoy it. Thank you very much, Reverend Zollars.

And now the roll call.

(Whereupon the roll was called by the secretary.)

Alexander	Garrison	Lewis	Rachunas
Anderson	Gertz	Lyons	Reum
Armstrong	Gierach	Macdonald	Rigney
Arrigo	Green	Madigan	Rosewell
Borek	Hendren	Marolda	Scott
Bottino	Howard	Martin	Sharpe
Brown	Hunter	Mathias	Shuman
Buford	Jaskula	McCracken	Smith, E.
Butler	Jenison	Meek	Smith, R.
Canfield	Johnsen	Miller	Sommerschield
Carey	Johnson	Miska	Stahl
Cicero	Kamin	Mullen	Stemberk
Coleman	Karns	Netsch	Strunck
Connor	Keegan	Nicholson	Tecson
Cooper	Kelley	Nudelman	Thompson
Davis	Kemp	Orlando	Tomei
Dove	Kenney	Ozinga	Weisberg
Downen	Kinney	Pappas	Wenum
Dunn	Klaus	Parker, C.	Whalen
Durr	Knuppel	Parkhurst	Willer
Elward	Ladd	Patch	Wilson
Evans	Laurino	Peccarelli	Witwer
Fay	Lawlor	Pechous	Woods
Fennoy	Leahy	Perona	Wymore
Fogal	Lennon, A.	Peterson	Yordy
Foster	Lennon, W.	Pughsley	Zeglis
Friedrich	Leon	Raby	

Answering "present"—107

PRESIDENT WITWER: The Chair recognizes Mr. Jenison.

MR. JENISON: Mr. President and fellow delegates, I am sorry to advise this body that my colleague, Delegate Charles Young, of our district, will be unable to be with us this week due to the sudden death of his mother-in-law in California yesterday, and I ask that the record show he be excused for this period.

PRESIDENT WITWER: We regret the announcement. Thank you, Mr. Jenison. Mr. Fay?

MR. FAY: Mr. President and fellow delegates, It has just been called to my attention, although I have not had an opportunity to read it in the *Chicago Sun-Times*, that our distinguished vice-chairman of the Judiciary Committee is being considered for the Appellate Bench, and I want to say without hesitation on the part of the Judiciary Committee that we would wish him well and endorse him in every way. (Applause)

PRESIDENT WITWER: Thank you very much. Mr. Nudelman? Just a minute; Mr. Nudelman, please. I don't believe that your mike is working—take another mike, Mr. Nudelman.

MR. NUDELMAN: Mr. President, ladies and gentlemen, and Mr. Fay. The only thing I said was that the only problem with that headline is that Mr. Dreiske is not on the slate-making committee. (Laughter)

PRESIDENT WITWER: Well, good luck.

Now, on the roll call we have a quorum, and now we'll turn to matters of privilege. For what purpose do you rise, Mr. Lewis?

MR. LEWIS: Mr. President, I would like to ask that

Anything else now while we are in plenary session? If not, Mr. Cicero moves that we now resolve ourselves again into a Committee of the Whole, seconded by Mr. Shuman. Those who favor it, please say aye. Those opposed, nay. It's carried.

We are now back in Committee of the Whole, and I believe, if I understand correctly, Mr. Lewis, we are on section 3, having to do with reapportionment.

MR. LEWIS: We are, Mr. President. I would suggest we start with section 3A, and Delegate Perona will handle that.

PRESIDENT WITWER: Thank you. Did you have a question, Mr. Green? Mr. Green?

MR. GREEN: Well, you previously wanted to do that section 16 before.

PRESIDENT WITWER: I beg your pardon?

MR. GREEN: Do you want to do it, or we can wait until then.

PRESIDENT WITWER: Mr. Lewis, section 16 is a new section? What is the wish of the committee?

MR. GREEN: It's up to the Chair. We don't care, Mr. President.

PRESIDENT WITWER: All right, let's do it, and then we will have one final thing, and that will be the reapportionment, and will you make your motion, Mr. Green? Does the clerk have it?

MR. GREEN: Would the clerk please read the proposed section 16?

PRESIDENT WITWER: Mr. Green has proposed section 16, and if you will read it, please.

CLERK: Amend the report of the Committee on Legislative Article by adding a new section as follows:

> Section 16, entitled, 'Pension and Retirement Rights.' Membership in any pension or retirement system of the state or any local government or any agency or instrumentality of either shall be an enforceable, contractual relationship, the benefits of which shall not be diminished or impaired.

PRESIDENT WITWER: Thank you. Is it seconded? Seconded by Mr. Coleman. Are you ready, Mr. Green, to proceed?

MR. GREEN: Yes, sir. I will be very brief about this, but basically I think we are faced in constitutional writing with either granting powers or prohibiting powers, but here we have a consideration of a legislative power that the General Assembly really hasn't adhered to for a long, long while; and it is for this purpose that this amendment is offered.

Now, at the end of 1968 in Illinois we had more than 370,000 public employees who were participating in 374 pension funds in this state. In addition, there were more than 79,000 people who were already on retirement or disability or survivor's insurance benefits from these funds. So in Illinois at the end of 1968 we had approximately 500,000 people who were relying on the public employee pension plans in Illinois for their present and future security.

Now this amendment does two things: It first mandates a contractual relationship between the employer and the employee; and secondly, it mandates the General Assembly not to impair or diminish these rights.

Now, with regard to the first point, the Illinois courts have generally ruled that pension benefits under mandatory participation plans were in the nature of bounties which could be changed or even recalled as a matter of complete legislative discretion. And as a result in Illinois today we have public employees who are beginning to lose faith in the ability of the state and its political subdivisions to meet these benefit payments. This insecurity on the part of the public employees is really defeating the very purpose for which the retirement system was established, and this is one of the reasons why I personally request that the Convention adopt the provision which will guarantee these rights and direct the General Assembly to take the necessary steps to fund the pension obligations.

Now, just a little background with regard to what the General Assembly has done. In the past twenty-two years the unfunded accrued liabilities of these pension plans in Illinois have increased from about $359,000,000 to almost $2,500,000,000, and the unfunded accrued liabilities are real and are not theoretical obligations based upon service already rendered.

Despite the consistent warnings from the Pension Laws Commission, the current budgeting of pension costs necessary to ensure the financial stability of these funds, the General Assembly has failed to meet its commitments to finance the pension obligations on a sound basis. In 1967 the General Assembly approved Senate Bill 515 which provided for the appropriation to one state university retirement system, to at least equal to an amount which would be necessary to fund fully the current service costs and to cover the interest on the past service; and despite this legislative mandate, the General Assembly refused to appropriate the necessary funds. Now, during this two-year period alone the appropriations under this system were $67,000,000 less than the minimum required by the senate bill.

Now, what we are proposing is being carried out in some other states by law. Our language is that language that is in the New York Constitution which was adopted in 1938, really under a similar circumstance. In 1938 you were about at the end of the Depression, but there was a great consideration on the part of the New York General Assembly to really cut out some of the money that they were giving to the pension programs in New York; and it was for this reason that the New York Constitution adopted the language that we are suggesting. Since that time, the state of New York—the pension funds for public employees have been fully funded, and so I think we have good reason to believe that this type of language will be a mandate to the General Assembly to do something which they have not previously done in some twenty-two years.

Now, we are not in any way suggesting that this $2,500,000,000 that they are in arrears be brought up to date at any one time. The New York Constitution mandated that state to fully fund the program in two years. This would be a physical impossibility in Illinois.

I do believe that if we could contact the actuary of the programs, it may well be in the scheduling, we could come up with a scheduling to do it. But in lieu of a scheduling provision, I believe we have at least put the General Assembly on notice that these memberships are enforceable contracts and that they shall not be diminished or impaired.

Now, I would like to yield to Delegate Kinney for any further remarks.

PRESIDENT WITWER: Mrs. Kinney?

MRS. KINNEY: Thank you, Mr. President. I was interested in initiating this amendment and did it by requesting a ruling from the Rules Committee and from this Convention as to when it might appropriately be presented. The fact that it comes up now as an amendment to the legislative article should not deter you. Delegate Davis very kindly informed me that this ruling was made to allow its presentation at the first reading stage. But I would remind you that, of course, if adopted, it can be shifted to a more appropriate section of the constitution, perhaps falling into some category such as general government proposals fall into.

To establish the record as to intent, I should just like to briefly say that the word "enforceable" is meant to provide that the rights so established shall be subject to judicial proceedings and can be enforced through court action. The word "impaired" is meant to imply and to intend that if a pension fund would be on the verge of default or imminent bankruptcy, a group action could be taken to show that these rights should be preserved. The amendment does not mention whether benefits could be increased. It is definitely the intent that an increase in benefits would not be precluded. Many states tie their pension and retirement benefits into a cost of living and raise them from time to time. It is the intent that this amendment would permit so doing if the legislature at some future time should decide to do this.

Mr. Green's interest in this matter is a little different than mine. It is cosponsored by Delegate Green, myself, my codelegate, Anthony Peccarelli, and Mr. Zeglis. It has the support of a large number of other delegates—

PRESIDENT WITWER: Just a minute, please. Let's stay in order. Mrs. Kinney has the floor.

MRS. KINNEY: —it is supported by a large number of other delegates: Mr. Bottino, Mr. Fennoy, Mr. Nudelman, Mr. Gertz, Mr. Buford, Mr. Carey, Mrs. Howard, Mr. Hendren, my seatmate, David Kenney, Mr. Friedrich, Mr. Ron Smith, Mr. Klaus, Mr. Lyons, Mr. Daley, and Mr. Brown.

My interest in this particular amendment stems from my acquaintance with police officers and firemen. In prosecuting criminal cases I have many times had the occasion to have police officers as my witnesses. As you would all be aware from your mail and mine, they were much concerned about home rule proposals. In DuPage County there are approximately thirty-two small municipalities. The police officers and the police forces range anywhere from four-men forces to very large, well organized departments, having perhaps sixty employees. Their concern in the mail and in the personal calls that I received—because, as I say, I do know many of the officers personally, and over a long period of time—was that a home rule provision, if adopted by this Convention, might allow a municipality who preferred to use retirement money to repair the streets or some other thing, to abandon a pension system.

Now, I am sure that is not at all what was intended; but in any case many police officers are most concerned, and they have said to me that their salaries are very low, their duties can sometimes be unpleasant; and if they cannot rely on their pensions, they may as well leave now. I think that this would simply be a means of giving them assurance that these benefits will not at some future date be eliminated on the part of municipalities who do contribute to these funds. Thank you.

PRESIDENT WITWER: Thank you, Mrs. Kinney. Mr. Coleman? Mr. Coleman waives. Mr. Kemp?

MR. KEMP: Thank you, Mr. President. Mr. President, ladies and gentlemen, I rise to support this measure, and I would share with you the fact that our civil servants—either state, municipal, or county—have a vested interest in these pension plans because all of those that I know of provide joint contribution from both the employer and the employee.

I would remind some of the members of this Convention that there have been municipalities in this state that have gone bankrupt, including the city that I come from. I can remember in the city of Chicago when my father was an employee of the city of Chicago that our family subsisted on script; but that I would also call to your attention that even during those times that those civil service employees who retired never had their pension altered or amended, even during those trying times during the days of the Depression.

The kind of interest that our civil servants have shown in this problem, whether they were members of unions or not, would include—over and above firemen and policemen—teachers who belong to the teachers' union and teachers who belong to the state association; it would include clerical employees; it would include semiprofessional employees. And in keeping with Mrs. Kinney's argument, I would remind you that the government or municipal employee is not notoriously overpaid, and that these pension plans oftentimes include, not only the worker, but the spouse at the death of the worker where that spouse then receives a lesser amount than that was originally intended for the person who is the employee.

It would seem to me, in the light of the mail that some of us have received, and particularly from the firemen around the state, that we have already been made aware of the kinds of concerns. I would presume that the purpose of this proposal is to make certain that irrespective of the financial condition of a municipality or even the state government, that those persons who have worked for often substandard wages over a long period of time could at least expect to live in some kind of dignity during their golden years; and I would urge that we support this obviously nonpartisan measure.

PRESIDENT WITWER: Thank you. Mr. Parkhurst?

MR. PARKHURST: Mr. President and fellow delegates; on the face of it, this innocuous little amendment sounds a lot like motherhood and strawberry shortcake. Actually, I think it is a culmination of a kind of a running battle by a special interest group of pension administrators in the state of Illinois that has been going on in the legislature for years and years and years; and it probably should be continued in the legislature.

Now, here's—it seems to me—the fallacy of trying to constitutionalize this sort of a thing. First of all, the background in the legislature has been that many people who are entitled to a pension which is administered or given at the state level have come to Springfield and said, "Our pension is not fully funded. Our actuary tells us that you will have to have $2,200,000,000 in state money to put into a special fund to pay off the potential claims that may now be filed to get this

particular pension or that particular pension when the benefits become due and payable to the retirees."

And the legislature has said, "For Heaven's sake, we don't have $2,200,000,000. Why can't you let us run it like the federal government runs the Social Security program, which is to pay the benefits out of the income as they become due." And the proponents of 100 percent funding have said, "Nope, that's not good enough. We want you to put all the money there right now, and not wait until the payment comes due before you wrestle up the money to make the payment."

Now, there has been a little compromise from that 100 percent position in the last several sessions—and I am sure Delegate Elward knows more about the current situation in the last session than I do—but I think Delegate Green pointed out a moment ago that the proponents of funding these pensions have said to the General Assembly, "Well, maybe you don't have $2,200,000,000 or whatever the magic figure is, but at least you can begin to do it, so maybe you ought to put $60,000,000 a session into the funding of these pensions and allocate it so that we get built up to 100 percent, instead of having the various funding percentages, ranging all the way from maybe 20 percent up to around 80 percent, depending upon which pension fund you are talking about."

Now, the trouble with this amendment is, as I read it, that you would eliminate the argument constitutionally. You would mandate the General Assembly to put in 100 percent of the money to pay anybody's pension on anybody's actuarial projection right now, because it says, "the benefits of which shall not be diminished or impaired." And you can bet your life that with the intent being, as Delegate Kinney said a moment ago, to have a collective action in case of impairment, somebody would run into the General Assembly or into court —worse yet—and say, "We're only at 23 percent. That other fellow over there is at 39 percent of what his actuary says should be the funding; and neither of them are at 100 percent, and make the General Assembly put up the money." That's what impairment means in terms of money at the state level. There just isn't that much money available. There is no history in the state of Illinois of impairing or diminish ing or welching on any pension plans when they come due. If we are going to get to the point in the state of Illinois where we can't pay the pensions, we're down the drain anyway; and anything you put in this constitution is not going to change that one bit.

Now, what about diminished? Let's talk about that for a minute. Somebody alluded to cost of living a moment ago. Suppose this goes in the constitution. Suppose we have more inflation. Suppose we devaluate the dollar in five years or ten years. Haven't we then diminished the pension funding and the pension rights of a pensioner, based upon today's dollars? Of course we have. So this is an admonition to the courts not to let them be diminished in terms of the general level of the economy or the value of the dollar, now or in the future. I submit that that is a kind of a left-handed way to increase their pension benefits and not let them ride with the value of the dollar in years to come.

Now, that's the state level. Now, think a minute about what this would do at the local level. We're just about to talk about home rule, maybe hopefully tomorrow. And when you think about funding, not impairing, not diminishing, any of the local pensions of which there are a myriad in Illinois, at the local government level and finding the money from every municipality and every school district and everybody else at every local level of government, to put the money in the pot right now so those administrators can have their hands on it and administer it and invest it in their own little way, it seems to me you just aren't being sensible, because there isn't enough money in home rule with income taxes and licensing for revenue and personal property tax and everything else you can conceive of to raise that kind of money in every town and municipality in the state of Illinois.

This is a terribly, terribly mischievous amendment. It is the desire of a special interest group; it should be legislative; there is no history of impairment; there is no history of welching on any contracts; and to put it in the constitution is simply pandering to a group that haven't been able to have their way in the General Assembly.

PRESIDENT WITWER: Thank you. Mr. Thompson? Mr. Thompson waives. Mr. Elward?

MR. ELWARD: I should like to associate myself completely and word for word with the remarks of Delegate Parkhurst. This amendment is, I am sure, well founded, and there is no reason certainly to question the sincerity of those who offer it; but the mischief of the language and the interpretations here—let me cite a few cases beyond what Delegate Parkhurst referred to.

One of the things that's wrong with the pension systems of this state is that there are too many of them, and the trustees of the various pension systems—and I now include the policemen and the firemen, particularly the firemen, in downstate Illinois —have stubbornly refused over the years to consider any kind of voluntary or mandatory consolidation or reorganization or union together. And in some instances, ladies and gentlemen, particularly when we get down to the municipal level, you have almost as many trustees as you have beneficiaries, which is hardly a situation that can claim much confidence on the part of the general public.

Now, I have been able so far to restrain my admiration for the governor and he for me; but if ever there was a bust-the-budget constitutional amendment, this is it; because either it means a mandatory funding up to some percentage figure way beyond what the average is now, or it doesn't. If it doesn't mean it, it doesn't do anything; it isn't in line with what the groups want. If it does mean it, it means hundreds of millions of dollars more in next year's budget with the governor having no control over it. I, for one, even though not of his party, would not want to see any chief executive mandated into that position. This would, it seems to me, prohibit consolidation which hopefully, under economic pressures in times to come, the legislature can get some of these associations together. The idea of having hundreds of pension funds running around the state without the benefit of consolidation and the benefits that can come from consolidation and proper planning of their investments are just so ridiculous that those who claim they speak for the beneficiaries of the recipients are really, in my judgment, not serving their best interests.

What about the words "impairment" or "diminishing"? Supposing the General Assembly decides they want to cut the benefit for a surviving widow of a policeman in order to in-

crease the benefits of the minor children? Under this constitutional amendment that might well be prohibited; and yet all might agree that this, in the long run, would be the best or better social policy. What you are saying is that the present structure—which admittedly is not identical in each fund and which is surely far from the ideal in terms ofjustice and charity—the present structure is to be frozen in for all time to come.

I pass over without further discussion the funding question, the cost-of-living question, the whole question of inflation in the future. This is well-intentioned, but like so many other things that are well-intentioned, it has consequences far beyond this afternoon and today, and I for one must oppose it.

PRESIDENT WITWER: Mr. Borek?

MR. BOREK: Thank you, Mr. President. Ladies and gentlemen, I rise to speak against this amendment. The only reason why pension and retirement rights are in the present—people today enjoy them, because the 1870 Constitution said nothing about this. I think this is strictly legislative and certainly ought to be not put in the constitution.

Let's look at it this way: We're told on this floor that one out of every seven people are public employees. By this amendment we are doing special legislation protecting one out of seven. What happens to the six out of seven that do not get this constitutional guarantee? They've got to be resentful and vote against this.

May I remind you, too, that the tremendous competition between labor and management to offer better conditions for the employees might make the words "pension" and "retirement" as anachronistic as the Model T Ford fifty years from today. There might be completely new types of systems. To freeze this in the constitution might hurt the very, very people that we are trying to help at this time.

Finally, I would like to state that "diminished" or "impaired" indicates to me somehow that the treasury of the state of Illinois would guarantee 374 pension funds; should they go broke, they will reimburse them to the extent that they can operate.

I think this is a very bad amendment, and I am certainly talking against it. Thank you, Mr. President.

PRESIDENT WITWER: Thank you. Mr. Lyons?

VICE-PRESIDENT LYONS: Mr. President, let me start out by saying that numerous members of my family are beneficiaries of the Chicago Police Department Pension Fund. I was myself at one time a member of that estimable fund. I was also a member of the Pension Laws Commission, and I have been through the upfunding argument and all this other business that Delegate Parkhurst referred to, including the movement in the 1965 session of the General Assembly by a party other than my own to fully fund all the pension funds of the state, which would have cost a couple of billion dollars, as somebody has pointed out.

But I would like to ask one of the sponsors of the amendment—I am a cosponsor of it myself—I *thought* that the purpose of this amendment was to give protection to those people who felt that they needed protection for their pension rights in the event that sweeping home rule powers were given to local governments. I recall receiving a flurry of letters and telephone calls early in the session when the local government articles began to be introduced from police and fire associations who were very fearful that a general grant of home rule powers to local governments might in some way impair their pension rights. I thought that all that this amendment was designed to do was to cure that. Now, if it does something else, or if the language needs to be cleaned up, that's one thing. But the genesis of the amendment, I thought, was simply to protect people who up until now have felt protected. I am aware of no movement to upfund all the funds—nobody's got that kind of money.

I would just appreciate an answer from somebody who feels that he knows.

PRESIDENT WITWER: Mr. Parkhurst?

MR. PARKHURST: Perhaps I can furnish at least part of the answer. Delegate Lyons is quite right, that when the flurry of letters and messages and delegations came to the Local Government Committee, the interest of those people was, as you have described it, Tom, to be sure that home rule did not give to municipalities or anybody else that had home rule the power to invade a pension fund, change the administration system—

VICE-PRESIDENT LYONS: Or just abolish it.

MR. PARKHURST: —or abolish it completely. That was the fear that those people had.

Now, at that point we spent much time—Delegate Zeglis was involved in this and others—talking with delegations from the police and fire pensions primarily. And it was, I think, made clear to them—and there was no further contact after awhile—it was made clear to them that under the system of guaranteeing to the state, under the pre-emption system which is contained in 3.2B of the Local Government Committee report, which says:

> The General Assembly may provide by general law for the exercise of any power or function by the state, and when such a law specifically provides that the power or function may be exercised exclusively by the state, units of local government shall not exercise it.

We spelled this out, talked to them about it, and indicated that this was such a power that had been exercised by the state, and all these local pensions were matters of statutory creation; and that unless the legislature decided to not make that power exclusively the state's and permit that power already exercised by statute to be exercised by the local units of government, we had nothing to worry about. And they were content that certainly the legislature wasn't going to give to City "X" or City "Y" or City "Z" or County Zilch the right to invade their pension administration and their pension systems—now—wait a minute—

PRESIDENT WITWER: Just a minute.

MR. PARKHURST: —I am answering the question, I think. And then—

PRESIDENT WITWER: Now, wait a minute. Just a minute. A point of order has been raised, and you have reached the end of a sentence now. May I hear the point of order.

MR. KEMP: Mr. Chairman, unless my hearing is faulty, I believe that Mr. Lyons asked as to whether or not the proponents of this proposal had an argument—or had an answer to his specific question. I now suggest that by his arguments—

well put before this Convention—that Mr. Parkhurst is not a proponent and is now reengaging in the argument that he made before; and it seems to me that the people who would be entitled to answer Lyon's question would either be Mrs. Kinney, Mr. Green, or some of the other people whose names appear on this proposal.

PRESIDENT WITWER: All right. Now, Mr. Kemp, may I rule on your point of order? Mr. Lyons did initially ask advise from any of the sponsors; but then he broadened his question to ask a matter of the Home Rule Governments Committee, and the impact on its initial work as evidenced by a flood of communications of concern. I think you are going to hear from both.

Now, Mr. Parkhurst, will you complete your statement, and then we will hear from the sponsor on the other branch of the question raised by Mr. Lyons, and everybody will be happy.

MR. PARKHURST: Yes, Mr. President.

PRESIDENT WITWER: Thank you.

MR. PARKHURST: The furor that descended upon the Local Government Committee was, I thought, pacified and settled and solved by the answer I have just given you. Now, this is not a proposal that goes to the local government article; this is an amendment that goes to the legislative article and covers not only local governments, but retirement systems of the state. It does refer to benefits being diminished or impaired, as many people have commented on, including myself; and it is a broader concept—much broader than that narrow concept that was brought before our committee. That, I think, is a fair answer.

PRESIDENT WITWER: Thank you. Now, if there is a sponsor that would like to respond. Would you like to repeat that question now to Mr. Kemp?

VICE-PRESIDENT LYONS: Yes, I would, Mr. President. The question is, am I wrong in my supposition that the purpose of this amendment is only to provide security to people who now feel that they are secure in the event that sweeping home rule powers are given to local governments? That's what I thought this thing was designed to do.

MRS. KINNEY: Yes, you are right, Mr. Lyons. That is what it is designed to do. Benefits not being diminished really refers to this situation: If a police officer accepted employment under a provision where he was entitled to retire at two-thirds of his salary after twenty years of service, that could not subsequently be changed to say he was entitled to only one-third of his salary after thirty years of service, or perhaps entitled to nothing. That is the thrust of the word "diminished." It was not intended to require 100 percent funding or 50 percent or 30 percent funding or get into any of those problems, aside from the very slim area where a court might judicially determine that imminent bankruptcy would really be impairment.

Now, if the word "impairment" bothers people, I suggest, if it is the wish of the Convention, that word could be deleted, and the rest of the amendment could stand. It is also not intended to get into freezing in a system of trustees or persons who would administer the various funds. That is not touched upon or contemplated in this amendment.

As I said before, it is also not intended to preclude greater benefits for beneficiaries, pensioners, or their dependents at some future time. It is simply to give them a basic protection against abolishing their rights completely or changing the terms of their rights after they have embarked upon the employment—to lessen them.

VICE-PRESIDENT LYONS: Well, Mr. President, then I should like to speak in favor of the amendment, because I am not shocked at the notion of vesting contractual rights in beneficiaries of pension funds. As a matter of fact, in the last few sessions of the United States Congress there have been proposed numerous legislative enactments directly bearing on this subject, because there is thought to be an immense need in this country for just this kind of protection, not only in the public, but also in the field of private employees.

Therefore, I am not shocked at the notion of vesting contractual—enforceable contractual rights in these pension beneficiaries, if that is all that this thing is designed to do.

We now have heard from the proponents who have represented that that is the limit of the scope of this amendment. It does not refer to upfunding, nor does it seek to establish some sort of an administrative elite to administer these various funds. All that it seeks to do, as I read the thing, is simply to grant protection to people who feel that the protection they now feel they have might in some sense be impaired in the event that local governments move into these fields which heretofore were the preserve of the state.

PRESIDENT WITWER: Thank you, Mr. Lyons. Mr. Peccarelli is next.

MR. PECCARELLI: If I were as knowledgeable as Delegate Green, as scholarly as Delegate Kinney, or the orator as is Delegate Kemp, I would say all the things that they have said. Being none of those three things, I would just ask you to take what they have said and consider it and emphasize what they have said and ask that you vote for the amendment.

PRESIDENT WITWER: Thank you. Mr. Whalen?

MR. WHALEN: Mr. President and fellow delegates, I agree with Delegate Kinney, that as I read section 16, it doesn't require the funding of any pensions, and therefore the whole question of funding is irrelevant to the issue of whether we should adopt the provision.

One thing that does concern me, however, about section 16 is that it chooses to characterize pensions and the right to a pension as a contractual interest of the person receiving the benefit.

Under the existing Illinois law there is one line of cases which characterizes pension benefits as being contractual rights, and another line of cases which characterizes pension benefits as being proprietary rights of the person receiving the benefit.

Under section 16, what we would have done is lock in the contractual line of cases into the constitution, and I am not so sure that that in the end would benefit the people that we seek to benefit by this provision, because particularly in bankruptcy it seems to me, which was the concern of Delegate Kemp, the benefit—the person receiving the pension benefits would stand a better chance of receiving full payment if the benefit were characterized as proprietary rather than contractual; and, therefore, I think that what, in fact, we may be doing by this provision is derogating in some way the rights of pensioners.

I would add another point in response to Delegate Kemp and Delegate Lyons; and that is that section 16 in no way vests any pension rights for pensioners. All it does is say that the pension is a contractual interest which the pensioner has; and the line of cases again has repeatedly held that this is a contractual right and may be subject to any contingency built into the contract. Therefore, they can be a contractual right subject to the vestment, if you will, or any other kind of contingency. So I am afraid that in the long run that this section 16 may derogate the very rights that the proponents are trying to foster here.

I would suggest that, rather than take the approach of section 16, what we, in fact, might do is turn to section 14 of the bill of rights, which the Committee of the Whole has already passed on first reading, and that says that no ex post facto law or law impairing the obligation of contracts or making any irrevocable grant of special privileges or immunity shall be passed. It seems to me that the contract clause gives the pensioner the protection against the diminishing or impairing of his contractual rights, which the proponents of this amendment seek to achieve. But if they want to give some kind of hortatory assurance to the pensioners, the place to do it would be in section 14, just by saying no law shall be passed which shall impair the obligation of pensions; and I think that would achieve the end. Additionally, it wouldn't raise the problem of characterizing all pensions as contractual rights rather than proprietary rights; because I think in the long run it may be more advisable for the pensioner to have a proprietary right here.

Therefore, I would oppose this amendment, and I would hope that at the appropriate time in the bill of rights some amendment could be added that would just add the word "or pensions" after the word "contracts" in the contract clause.

PRESIDENT WITWER: Thank you, Mr. Whalen. I see our good friend, Bill Day, and Mrs. Day leaving the gallery, and I wouldn't want them to get away without a recognition of their presence. (Applause) As you know, Mr. Day is the long-time Chairman of the Illinois Legislative Council, and the council has been invaluable in its service to us. I am glad you were only shifting locations and that you are going to stay awhile. Thank you very much. We are delighted to have you with us.

And now we have further debate, and there are a number on the list here. Mr. Woods is next.

MR. WOODS: Mr. President, this amendment literally bristles with potential for confusion, and it has strong special-interest overtones.

PRESIDENT WITWER: Thank you. Mr. Weisberg?

MR. WEISBERG: Thank you, Mr. President. I just wanted to say briefly that I feel that the Convention is not really in a position to make a reasonable judgment about the many kinds of questions that have been raised about the proper interpretation and consequences of this amendment. It's interesting to hear the present and former members of the legislature give us some insight into the dispute that apparently has long some history in Illinois here.

I would like to echo the suggestion that Mr. Whalen made that not only that we take this up in connection with the impairment of contracts clause in section 14 of the bill of rights, but that it seems to me that before we do that, that it is very important that we be given a definitive statement in writing by the sponsors of this proposal as to exactly what it is intended to do. To take it up for the first time in the way in which it is proposed we do it now seems to me to really invite us to walk up a swamp blindfolded.

PRESIDENT WITWER: Thank you. Now, we have been on this for quite a long time. We have three more on the list, and then perhaps we can vote. Mr. S. Johnson?

MR. S. JOHNSON: Thank you, Mr. President. I, too, got an avalanche of letters on the home rule part of this, and I looked into the problem, and as I recalled it—and Delegate Kinney mentioned that this was what she was attempting to get at—as I recall the problem, it was this: that the police and firemen pensioners have now in the statute a provision which requires or permits them to levy a tax if for some reason the pension doesn't provide enough income to pay the beneficiaries. Then they can go to the local government taxing bodies and levy a tax to make sure that the benefits are paid. Now, this is what they wish to protect, and this is what they felt the home rule provision might take away from them, as I recall the problem.

Now, maybe I am wrong about that, but that's the way it seems to come through to me. Now, if that is the case, I think we've gone into something far broader than that simple protection here, and this is what worries me a little bit about this amendment. Until such time as it can be narrowed down to that, or just discarded entirely, I think I would have to oppose it.

PRESIDENT WITWER: Thank you. Mr. Davis?

MR. DAVIS: Mr. President, ladies and gentlemen, I don't know whether I served on Pensions and Personnel in the senate for ten or twelve years, but it was one or the other. This is an extremely complex area. I think that we would be making a serious mistake to adopt this language without consulting at least with the actuary who advises the Pension Laws Commission of the state. I think that we would be far better off to reject this proposal and to place something in the bill of rights which would be hortatory in nature and perhaps give reassurance to the people who are involved here that their rights are vested and they will continue to be vested; but I think to adopt this in this language may very well, as Mr. Whalen has so well pointed out, do harm to the very people that we are attempting to protect.

PRESIDENT WITWER: Thank you. Mr. Bottino?

MR. BOTTINO: Mr. President and fellow delegates, as one of the signers of this proposal, I want to say that I think—and I believe this sincerely—that Mr. Whalen's proposal and suggestion is not only the right thing, but the thing that will satisfy a good number of people.

I, too, sat through a couple of sessions of the legislature and had these people who were concerned on pensions, and some of us are, too, as members of the teaching profession, and representative—or Delegate Parkhurst has given part of the story. I say part of it because I think it would be just as bad, you might say, to have the state fund completely all of its share of the pension systems, but the other side of it is, as Mr. Parkhurst and other members of the legislature may know, that participants in these pension systems have been leery for years of the fact that the—this matter of the amount the state has

appropriated has been made a political football, in a sense. In other words, in order to balance budgets, you see, the party in power would just use the amount of the state contribution to help balance budgets, and this had gotten to the point where many of the socalled pensioners under this system were very concerned; and I think this is the reason that pressure is constantly being placed on the legislature to at least put a fair amount of state resources into guaranteeing payment of pensions. But I just want to rise in support of Delegate Whalen's suggestion.

PRESIDENT WITWER: Thank you. Now I believe we should hear in summation from Mr. Green. Since this is a new section, I doubt that it's one that requires hearing from the committee.

MR. GREEN: Well, in tackling Delegate Elward and Delegate Parkhurst, I guess we didn't have a Charlie Coleman "merely bill" here.

In answer to the contractual status, one of the overwhelming reasons to mandate this contractual status is based on a Supreme Court decision from New Jersey in 1964 that has a very, very similar pension problem to that of Illinois.

In a Supreme Court decision, in ruling—or rejecting—an appeal to attach a contractual status to a plan of mandatory participation—and this is the interesting part—it stated that all these funds had in common the promise of inevitable doom. The reason was that the annual revenues in New Jersey were not related to the ultimate cost of pension benefits; so that while current income might suffice for the earlier pensioners, the day had to come when little or nothing would remain for others, even of their own contributions to the fund. Now this, ladies and gentlemen, is basically what the people of Illinois—or the public employees of Illinois—are very fearful of.

In answer to Delegate Parkhurst's question with regard to the diminishing aspect of it—the cost of living—any of you who know when you buy an insurance policy you're going to get back what that contract says. Now if the dollar isn't worth but twenty-seven cents when you get it back, there is absolutely no reason why you have any recourse against that insurance company.

What we are trying to merely say is that if you mandate the public employees in the state of Illinois to put in their 5 percent or 8 percent or whatever it may be monthly, and you say when you employ these people, "Now, if you do this, when you reach sixty-five, you will receive $287 a month," that is, in fact, is what you will get.

Now, I would like to read what the General Assembly says in their laws with regard to contributions by the state, and see if you feel they have lived up to it:

> The total amount of state contributions applicable to any fiscal year shall be the sum of the amounts estimated to be required on the basis of the actuarial tables adopted by the board.

Now, actuarial tables are not different in each of 374 pension plans. You can get one that will be universal across the nation. If you are eighty-seven years old an actuarial table will tell you how long you will live; and that is what these pension contributions are based on. What we are trying to do is to mandate the General Assembly to do what they have not done by statute. I would further submit that the only one of 374 pension programs that is fully funded in the state of Illinois is that of the General Assembly, and I think that's very odd. (Laughter)

Now, I think they either ought to live up to the laws that they pass or that very quickly we ought to stop when we are hiring public employees by telling them that they have any retirement rights in the state of Illinois. If we are going to tell a policeman or a school teacher that, "Yes, if you will work for us for your thirty years or until whenever you reach retirement age, that you will receive this," if the state of Illinois and its municipalities are going to play insurance company and live up to these contributions, then they ought to live by their own rules. And this is all in the world this mandate is doing.

In closing, I would further say it was done in 1938 by these exact words in the state of New York. It has worked; and you all know there is certainly a lot wrong in New York state, but from the standpoint of its public employee pension program, it is fully funded, it has not bankrupted the state to do it, and all is right with the world where this language has been used. Thank you very much.

PRESIDENT WITWER: Thank you. Now, we are on the Green-Kinney-et al. amendment, having to do with the addition of section 16. Mrs. Kinney, did you wish to be heard in summation, also?

MRS. KINNEY: Yes, I would like to, Mr. Chairman.

PRESIDENT WITWER: All right, I am sure the body would be glad to hear from you.

MRS. KINNEY: Well, I would say that I would wonder when the appropriate time to raise this in the bill of rights would be, since first reading has already come and gone and this wasn't mentioned. That is why I sought a specific ruling as to when it might be raised.

PRESIDENT WITWER: Well, Mrs. Kinney, if you are asking the Chair—

MRS. KINNEY: No, I am just commenting, Mr. President, thank you. I might say that Mr. Green and I in proposing this amendment consulted with the counsel to Mr. Whalen's committee, and the issue of proprietary rights perhaps being more advantageous was not raised at that time or not at all until it was commented upon upon the floor.

But I would say that the New York Constitution adopted such a provision in 1938, and this amendment is substantially the same language as the New York Constitution presently has. The thrust of it is that people who do accept employment will not find at a future time that they are not entitled to the benefits they thought they were when they accepted the employment.

PRESIDENT WITWER: Mrs. Kinney, may I interrupt? Gentlemen, ladies, please give Mrs. Kinney the courtesy of a full hearing.

MRS. KINNEY: Thank you. Mr. Green and I did discuss the term "vesting" with Mr. Kanter, the counsel to the Committee on Style and Drafting, and we thought that it would be quite fair if a person undertook employment under a statute that provided for a contingency for lowering the benefits at some future time, that this was, indeed, the contract that he had accepted. All we are seeking to do is to guarantee that people will have the rights that were in force at the time they entered into the agreement to become an employee, and as Mr.

Green has said, if the benefits are $100 a month in 1971, they should be not less than $100 a month in 1990.

I would ask for a roll call vote on this, if nine other delegates will support me, Mr. President.

PRESIDENT WITWER: There are nine who support your request. There will be a roll call. And now before we start the call of the roll, the question is whether we shall adopt proposed section 16, captioned "Pension and Retirement Rights" on the motion of Mr. Green and others. And those who will favor adoption of section 16 will answer yea or yes on the roll call. Those who are opposed to section 16 being adopted will answer nay or no. Mr. Clerk, kindly call the roll.

(Whereupon the roll was called by the clerk and the following delegates gave an explanation of their vote.)

MR. BOTTINO: I would like to explain that I am voting no with the understanding that we are going Mr. Whalen's route.

MR. MAROLDA: I am going to vote yes, but I would like to say this: We are concentrating so much on pensions, I will say this, that in the next four or five years our Social Security will be better than pensions. Thank you.

MR. STAHL: My vote is "pass," Mr. President and fellow delegates. Although not currently a municipal employee, I must report that I have over $7,000 in a municipal employees' pension fund on deposit, and therefore I pass.

MR. WEISBERG: Mr. President, I am voting no. I would like to explain that while I think that public employees are entitled to reasonable protection for the rights that are the subject of this amendment, it seems to me that it is undesirable to attempt to do this in this manner, which I think may invite a great deal of uncertainty, litigation for some years to determine its meaning and effect, and perhaps hold out the illusion of protection without the reality of protection, which I think only the legislature can give.

MR. WHALEN: Mr. President and fellow delegates, my vote is no. I voted for the right of public employees to organize. I think public employees have the right to have their pension benefits protected. I think that the majority here has unwittingly actually deprived public employees of some of the current rights that they now have.

PRESIDENT WITWER: May I have the leave of the body to explain my vote from up here, or shall I go downstairs. No objection?

VOCIES: Leave.

PRESIDENT WITWER: I am voting yes in the hope that the points which Mr. Whalen has raised will be properly protected in the work of the Style and Drafting Committee and that there will be an affirmation that this does not direct or control funding. I vote yes.

Mr. Davis?

MR. DAVIS: Mr. President, I am sorry, I was out of the room when my name was called, and I would like to vote, and I vote no, and in doing so, I sincerely believe that I am safeguarding the interests of those who are protected under public employee pension funds. I just hope that the action of this Convention in this regard will not react in a bad and serious way on those people. Thank you.

PRESIDENT WITWER: Thank you. Any other votes? Persons out of the room? Mr. Madigan? Mr. Madigan votes yes, and Mrs. Anderson? Mrs. Anderson, no. Mr. Laurino? How do you vote, sir?

MR. LAURINO: Yes.

PRESIDENT WITWER: Yes on Mr. Laurino. Mr. Arrigo?

MR. ARRIGO: Yes.

PRESIDENT WITWER: Mr. Kenney?

MR. KENNEY: Thank you, Mr. President. I am sorry I was in the telephone booth earlier, and I wish to explain my vote. I wish to vote "pass" and explain that as a member of the State University's Retirement System I feel I should not express a yea or nay vote.

PRESIDENT WITWER: Thank you. Any others who would like to vote at this time. Mr. Kelley?

MR. KELLEY: I would like to change my vote from no to "pass."

PRESIDENT WITWER: Thank you. Mr. Cicero?

MR. CICERO: Thank you, Mr. President. Change my vote from no to "present," please.

PRESIDENT WITWER: Thank you. I guess that's it. Now, Mr. Clerk, roll call is closed. Just a minute; we haven't announced it. Mr. Stemberk, do you wish to announce your vote?

MR. STEMBERK: Yes. After a little bit of deliberation, I have considered the fact that I do have a vested interest in having a pension. I would like to change my vote from yes to "pass."

PRESIDENT WITWER: Thank you. And Mr. Alexander? I beg your pardon?

VICE-PRESIDENT ALEXANDER: No to "present."

PRESIDENT WITWER: Mr. Alexander changes his vote from no to "present." Mr. Orlando?

MR. ORLANDO: Mr. President, I, too—

PRESIDENT WITWER: Just a minute—one at a time here. I guess the clerk hasn't caught up with these rapid changes, not being a computer. Are you caught up now, Mr. Clerk? All right. Now, Mr. Orlando is next.

MR. ORLANDO: Mr. President, I wanted to change my vote from yes to "pass." I, too, have an interest in this matter and therefore feel I should not vote on it.

PRESIDENT WITWER: All right. Now, are we ready? Mr. Fogal?

MR. FOGAL: I wish to change mine from yes to "present." I have the same interest.

PRESIDENT WITWER: Mr. Fogal, yes to "present." Mr. Armstrong?

MR. ARMSTRONG: I suppose I have an interest as a teacher. My heart says I should continue to vote yes, but if my colleagues are passing, perhaps I should vote "pass" also.

PRESIDENT WITWER: All right. That is taken care of. Mr. Lyons?

VICE-PRESIDENT LYONS: Well, I am a member of a couple of pension funds, and I voted yes, and I persist in that vote. (Applause)

PRESIDENT WITWER: Now, Mr. Buford?

MR. BUFORD: Mr. President, I suppose I have been getting retirement benefits from the Teachers' Pension Fund longer than anybody, and I want to protect it. That's the reason I voted yes.

PRESIDENT WITWER: Thank you. Now, just a minute. Mr. Kemp, do you have a point of order?

MR. KEMP: I thought the polls were closed. If you will permit me, Mr. President, I thought I understood you to say that the polls were closed long before people began changing their votes from "pass" to yes and yes to no.

PRESIDENT WITWER: Now, Mr. Kemp—

MR. KEMP: I call a point of order.

PRESIDENT WITWER: All right, you made your point of order. Now, will you permit me to answer it, sir? The rule is, even though I may have made the statement informally, that the polls have closed because I thought everybody had stopped. The *Rules* of Roberts—and they bind us—permit a change of vote until such time as the roll call is announced. So your point of order is not sustained.

Mr. Woods?

MR. WOODS: Mr. President, may I thank you and Mr. Roberts, too.

PRESIDENT WITWER: Well, you don't have to thank me. You thank Mr. Roberts. Now, just a minute. Mr. Armstrong?

MR. ARMSTRONG: "Pass" to yes.

PRESIDENT WITWER: All right. The roll call has not as yet been announced. And now when I say the roll call is closed, it is with the understanding that nobody is up seeking to make a change, and that is all we had in mind, Mr. Kemp. Now, I guess nobody is up, and I am going to announce the roll call, and this locks it up.

Those voting in the affirmative were:

Armstrong	Hendren	Lennon, W.	Peccarelli
Arrigo	Howard	Leon	Pechous
Brown	Hunter	Lyons	Peterson
Buford	Jaskula	Madigan	Pughsley
Carey	Jenison	Marolda	Raby
Coleman	Johnsen	McCracken	Rachunas
Cooper	Kemp	Miska	Reum
Downen	Kinney	Netsch	Rigney
Durr	Klaus	Nicholson	Rosewell
Evans	Knuppel	Nudelman	Smith, R.
Fennoy	Laurino	Ozinga	Thompson
Friedrich	Lawlor	Pappas	Tomei
Gertz	Leahy	Parker, C.	Witwer
Gierach	Lennon, A.	Patch	Zeglis
Green			

Ayes-57

Those voting in the negative were:

Anderson	Foster	Mathias	Tecson
Borek	Johnson	Meek	Weisberg
Bottino	Kamin	Miller	Wenum
Butler	Karns	Mullen	Whalen
Canfield	Keegan	Parkhurst	Willer
Connor	Ladd	Scott	Wilson
Davis	Lewis	Shuman	Woods
Dove	Macdonald	Smith, E.	Wymore
Elward	Martin	Sommerschield	Yordy

Nays-36

Those voting "pass":

Kelley	Orlando	Stemberk	Strunck
Kenney	Stahl		

Pass-6

Those voting "present":

Alexander	Cicero	Fogal

Present-3

PRESIDENT WITWER: This has passed. The vote was yea, fifty-seven; nay, thirty-six; three, present; and six, "pass."

Now, any further amendments on this section? If not, the motion, please. Motion, Mrs. Howard? We have a motion or we should have from Mr. Green. Mr. Green makes the motion that this now be approved at first reading and submitted to Style and Drafting. It has been seconded by Mr. Lyons. Are you ready? Those who favor it, please raise their hand. Now, if you will lower your hands, please, those who are opposed. Section 16, as heretofore voted on, is approved and submitted to Style and Drafting at first reading by a vote of yea, seventy-five, nay, four.

Now, Mrs. Howard?

May I suggest that we—we are sort of pointing toward the idea that perhaps today we can complete the report of the Legislative Committee, and this means, of course, working this evening; and the job of reapportionment is still open.

Mrs. Howard, do you have something to tell us at this point?

MRS. HOWARD: Mr. President and fellow delegates, Delegates Canfield, Fogal, Knuppel, and Kinney join me in an amendment, a new section to the legislative article, calling for a United Assembly, which is a new concept for a legislature. In view of Delegate Karns's comments earlier today of not presenting matters which stood no chance of passage, I queried quite a few of the delegates to see if there was any chance of it passing. There was great interest in the idea, but very honestly, the votes were not there for passage, so I was going to move that it just be made a part of the record of the Convention; but since that time I had five or six delegates ask me to please present it so that we can ask some questions on it and debate the issue. Now, I will take leave of the Convention as to what they want to do on this, or whether you want to take up reapportionment first, or what your feeling is on it.

PRESIDENT WITWER: Well, do you think it is going to take very long, Mrs. Howard?

MRS. HOWARD: That will depend on the questions that will be coming from the delegates.

PRESIDENT WITWER: You have the privilege, as a member of this body, to make any motion that is germane, if you care to do it; and I think we ought to get it out of the way before we go into reapportionment, which will be our final job today, and I think we ought to stay with reapportionment until we are finished. So whatever time is taken on this will by necessity have to come out of reapportionment, or we will have to lengthen the work day to make adjustments. So, what is your motion, Mrs. Howard?

MRS. HOWARD: Well, in view of the nods around the room from some of the delegates, I presume the amendment had best be presented. I have written out the arguments. They are on everybody's desk, so perhaps someone could take a few

EXHIBIT 3

Speaker Turner: "Members, regular Session will now be in recess. And we will move to convene the First Conference Committee... First Special Session and Representative Currie moves that we use the Attendance Roll Call from the First Special Session. I'm sorry, I'm sorry. Representative Currie moves that we use the Attendance Roll Call from the regular Session for the First Special Session. Any objections? Seeing no objections, we'll use the... the Motion would carries. On page 2 of the Calendar, on the Order of Conference Committee Reports, there appears Senate Bill 1. The Chair recognizes... the Chair recognizes Speaker Madigan."

Madigan: "Mr. Speaker and Ladies and Gentlemen of the House, I come before you today to present the Conference Committee Report on Senate Bill 1. This is a comprehensive pension reform package that will lead to fiscal stability for the state and its pension systems. Based on the actuarial analysis prepared by the systems, we estimate that this proposal will save the state approximately $160 billion over the next 30 years and immediately reduce our unfunded liability by at least 20 percent. There are several changes that will impact current and retired employees. Let me make it clear that all of the changes in this Bill are prospective. We are not asking the systems to reduce current payments received by retired employees. Number one, future annual adjustments will be based on a retiree's years of service and the full CPI. Let me repeat, full CPI. The annual increase will be equal to 3 percent of years of service multiplied by $1 thousand for those who are not coordinated with Social Security and $800 for those coordinated with Social Security. The $1,800

calculus in lawmakers self-interest, trumping the needs of real pensioners, real taxpayers, real workers, real employees who are relying on lawmakers to address this, not to offer up excuse after excuse. Lawmakers, be the solution, stabilize this state's future, its credit rating, and its business climate. Vote 'yes'. Thank you, Mr. Speaker."

Speaker Turner: "Representative Fortner."

Fortner: "Thank you, Speaker. Will the Speaker yield?"

Speaker Turner: "Speaker would yield."

Fortner: "Mr. Speaker, I know we had some discussion when you presented SB1 to us back in May of this year and I want to revisit a couple of questions to understand what provisions may be the same or have changed since our discussion at that time. At that time, I asked and you concurred that the requirement of the systems or the ability of the systems to take an action to compel payment was pursuant to the law as it exists in the subsection of this proposal. That was SB1 back then and I believe is still true in the report presented to us. Is that correct?"

Madigan: "The answer is yes."

Fortner: "And at that time I also asked and I want to reiterate my question, the Legislature would still have the power through a statutory process, if then approved by the Governor whether directly in a normal statutory Bill or perhaps in one of our BIMP Bills that we pass as part of a budgetary process, to change the provisions of that subsection so that the law as it existed would be different, would change the number that would be required for us to pay, and therefore there would be no cause of action should that occur?"

Madigan: "The answer is yes."

Fortner: "The other thing I want to ask about is a response to some of the questions... some of your responses to some of the earlier questions and I think you commented that both the use of a defined contribution component and the downward salary adjustment were both put in as consideration, as potential ideas for consideration, should this go before the Illinois Supreme Court?"

Madigan: "The answer is yes."

Fortner: "As I understand it, those would apply to current employees. Was there any id... any piece of this that is designed to be consideration with respect to those who have already retired who would not be able to participate in either of those elements?"

Madigan: "The answer to your question is the... the new actuarially based funding formula, the two forms of supplemental payments, one of which carries your name. And then the ability of the systems to go before the Illinois Supreme Court to obtain a court order to get their payment pursuant to all of that."

Fortner: "Thank you. To the report. I expressed concern last May that though there are many very good elements of this Bill, many elements of this Bill that I think would survive a court challenge and I appreciate that some of those are things that I have offered up in legislation myself over the last couple of years as we have been going through this process of trying to stabilize and reform our pension systems. However, I am concerned that the form of the funding guarantee we have leaves us open to some jeopardy for our taxpayers in two

EXHIBIT 4

City of Chicago

2015 Budget Recommendations

Mayor Rahm Emanuel

Summary C

SUMMARY OF APPROPRIATIONS FROM FUNDS BY MAJOR PURPOSES FOR YEAR 2015

Fund No.	General Expense	Capital Outlay	Debt Service	Pension Funds	Specific Levies for Loss in Collection of Taxes	Total Appropriation
Property Tax Supported Funds						
0509 - Note Redemption and Interest Series Fund			$19,308,000		$805,000	$20,113,000
0510 - Bond Redemption and Interest Series Fund			609,039,000		14,819,000	623,858,000
0516 - Library Bond Redemption Fund			4,166,000		173,000	4,339,000
0521 - Library Note Redemption and Interest Tender Notes Series "B" Fund			75,994,000		3,104,000	79,098,000
0549 - City Colleges Bond Redemption and Interest Fund			35,170,000		1,462,000	36,632,000
0681 - Municipal Employees' Annuity and Benefit Fund				242,700,000		242,700,000
0682 - Laborers' and Retirement Board Annuity and Benefit Fund				24,019,000		24,019,000
0683 - Policemen's Annuity and Benefit Fund				194,122,000		194,122,000
0684 - Firemen's Annuity and Benefit Fund				96,300,000		96,300,000
Total - Property Tax Supported Funds			$743,677,000	$557,141,000	$20,363,000	$1,321,181,000
Non-Property Tax Supported Funds						
0100 - Corporate Fund	$3,377,498,921	$519,845	$15,906,550	$140,220,684		$3,534,146,000
0200 - Water Fund	575,229,109	6,169,315	181,438,000	20,192,576		783,029,000
0300 - Vehicle Tax Fund	204,046,305	68,790	1,005,905			205,121,000
0310 - Motor Fuel Tax Fund	82,948,000		16,166,000			99,114,000
0314 - Sewer Fund	230,278,392	468,862	128,945,000	7,660,746		367,353,000
0346 - Library Fund	88,339,024		700,000	2,515,976		91,555,000
0353 - Emergency Communication Fund	108,274,000					108,274,000
0355 - Special Events and Municipal Hotel Operators' Occupation Tax Fund	41,270,000		750,000			42,020,000
0505 - Sales Tax Bond Redemption Fund			40,062,000			40,062,000
0525 - Emergency Communication Bond Redemption and Interest Fund			22,325,000			22,325,000
0610 - Chicago Midway Airport Fund	142,022,450	1,372,315	97,638,975	4,666,260		245,700,000
0740 - Chicago O'Hare Airport Fund	524,194,758	11,396,550	494,826,033	22,852,659		1,053,270,000
0B09 - CTA Real Property Transfer Tax Fund	63,424,000					63,424,000
0B21 - Tax Increment Financing Administration Fund	10,150,000					10,150,000
Total - Non-Property Tax Supported Funds	$5,447,674,959	$19,995,677	$999,763,463	$198,108,901		$6,665,543,000
Total - All Funds	$5,447,674,959	$19,995,677	$1,743,440,463	$755,249,901	$20,363,000	$7,986,724,000
Deduct Transfers between Funds						552,234,000
Total - All Funds						$7,434,490,000
Deduct Proceeds of Debt						95,302,000
Net Total - All Funds						$7,339,188,000

EXHIBIT 5

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing
5 Sections 15-112, 15-154, and 15-157 and adding Section 15-126.2
6 as follows:

7 (40 ILCS 5/15-112) (from Ch. 108 1/2, par. 15-112)
8 Sec. 15-112. Final rate of earnings. "Final rate of
9 earnings":
10 (a) This subsection (a) applies only to a Tier 1 member.
11 For an employee who is paid on an hourly basis or who
12 receives an annual salary in installments during 12 months of
13 each academic year, the average annual earnings during the 48
14 consecutive calendar month period ending with the last day of
15 final termination of employment or the 4 consecutive academic
16 years of service in which the employee's earnings were the
17 highest, whichever is greater. For any other employee, the
18 average annual earnings during the 4 consecutive academic years
19 of service in which his or her earnings were the highest. For
20 an employee with less than 48 months or 4 consecutive academic
21 years of service, the average earnings during his or her entire
22 period of service. The earnings of an employee with more than
23 36 months of service <u>under item (a) of Section 15-113.1</u> prior

1 to the date of becoming a participant are, for such period,
2 considered equal to the average earnings during the last 36
3 months of such service.
4 (b) This subsection (b) applies to a Tier 2 member.
5 For an employee who is paid on an hourly basis or who
6 receives an annual salary in installments during 12 months of
7 each academic year, the average annual earnings obtained by
8 dividing by 8 the total earnings of the employee during the 96
9 consecutive months in which the total earnings were the highest
10 within the last 120 months prior to termination.
11 For any other employee, the average annual earnings during
12 the 8 consecutive academic years within the 10 years prior to
13 termination in which the employee's earnings were the highest.
14 For an employee with less than 96 consecutive months or 8
15 consecutive academic years of service, whichever is necessary,
16 the average earnings during his or her entire period of
17 service.
18 (c) For an employee on leave of absence with pay, or on
19 leave of absence without pay who makes contributions during
20 such leave, earnings are assumed to be equal to the basic
21 compensation on the date the leave began.
22 (d) For an employee on disability leave, earnings are
23 assumed to be equal to the basic compensation on the date
24 disability occurs or the average earnings during the 24 months
25 immediately preceding the month in which disability occurs,
26 whichever is greater.

1 (e) For a Tier 1 member who retires on or after the
2 effective date of this amendatory Act of 1997 with at least 20
3 years of service as a firefighter or police officer under this
4 Article, the final rate of earnings shall be the annual rate of
5 earnings received by the participant on his or her last day as
6 a firefighter or police officer under this Article, if that is
7 greater than the final rate of earnings as calculated under the
8 other provisions of this Section.
9 (f) If a Tier 1 member is an employee for at least 6 months
10 during the academic year in which his or her employment is
11 terminated, the annual final rate of earnings shall be 25% of
12 the sum of (1) the annual basic compensation for that year, and
13 (2) the amount earned during the 36 months immediately
14 preceding that year, if this is greater than the final rate of
15 earnings as calculated under the other provisions of this
16 Section.
17 (g) In the determination of the final rate of earnings for
18 an employee, that part of an employee's earnings for any
19 academic year beginning after June 30, 1997, which exceeds the
20 employee's earnings with that employer for the preceding year
21 by more than 20 percent shall be excluded; in the event that an
22 employee has more than one employer this limitation shall be
23 calculated separately for the earnings with each employer. In
24 making such calculation, only the basic compensation of
25 employees shall be considered, without regard to vacation or
26 overtime or to contracts for summer employment.

1 (h) The following are not considered as earnings in
2 determining final rate of earnings: (1) severance or separation
3 pay, (2) retirement pay, (3) payment for unused sick leave, and
4 (4) payments from an employer for the period used in
5 determining final rate of earnings for any purpose other than
6 (i) services rendered, (ii) leave of absence or vacation
7 granted during that period, and (iii) vacation of up to 56 work
8 days allowed upon termination of employment; except that, if
9 the benefit has been collectively bargained between the
10 employer and the recognized collective bargaining agent
11 pursuant to the Illinois Educational Labor Relations Act,
12 payment received during a period of up to 2 academic years for
13 unused sick leave may be considered as earnings in accordance
14 with the applicable collective bargaining agreement, subject
15 to the 20% increase limitation of this Section, and if the
16 person first becomes a participant on or after the effective
17 date of this amendatory Act of the 98th General Assembly,
18 payments for unused sick or vacation time shall not be
19 considered as earnings. Any unused sick leave considered as
20 earnings under this Section shall not be taken into account in
21 calculating service credit under Section 15-113.4.

22 (i) Intermittent periods of service shall be considered as
23 consecutive in determining final rate of earnings.
24 (Source: P.A. 98-92, eff. 7-16-13; 98-599, eff. 6-1-14.)

25 (40 ILCS 5/15-126.2 new)

1 Sec. 15-126.2. Plan year. "Plan year": The 12-month period
2 beginning on July 1 in any year, and ending on June 30 of the
3 succeeding year.

4 (40 ILCS 5/15-154) (from Ch. 108 1/2, par. 15-154)
5 Sec. 15-154. Refunds.
6 (a) A participant whose status as an employee is
7 terminated, regardless of cause, or who has been on lay off
8 status for more than 120 days, and who is not on leave of
9 absence, is entitled to a refund of contributions upon
10 application; except that not more than one such refund
11 application may be made during any academic year.
12 Except as set forth in subsections (a-1) and (a-2), the
13 refund shall be the sum of the accumulated normal, additional,
14 and survivors insurance contributions, plus the entire
15 contribution made by the participant under Section 15-113.3,
16 less the amount of interest credited on these contributions
17 each year in excess of 4 1/2% of the amount on which interest
18 was calculated.
19 (a-1) A person who elects, in accordance with the
20 requirements of Section 15-134.5, to participate in the
21 portable benefit package and who becomes a participating
22 employee under that retirement program upon the conclusion of
23 the one-year waiting period applicable to the portable benefit
24 package election shall have his or her refund calculated in
25 accordance with the provisions of subsection (a-2).

(a-2) The refund payable to a participant described in subsection (a-1) shall be the sum of the participant's accumulated normal and additional contributions, as defined in Sections 15-116 and 15-117, plus the entire contribution made by the participant under Section 15-113.3. If the participant terminates with 5 or more years of service for employment as defined in Section 15-113.1, he or she shall also be entitled to a distribution of employer contributions in an amount equal to the sum of the accumulated normal and additional contributions, as defined in Sections 15-116 and 15-117.

(b) Upon acceptance of a refund, the participant forfeits all accrued rights and credits in the System, and if subsequently reemployed, the participant shall be considered a new employee subject to all the qualifying conditions for participation and eligibility for benefits applicable to new employees. If such person again becomes a participating employee and continues as such for 2 years, or is employed by an employer and participates for at least 2 years in the Federal Civil Service Retirement System, all such rights, credits, and previous status as a participant shall be restored upon repayment of the amount of the refund, together with compound interest thereon from the date the refund was issued ~~received~~ to the date of repayment at the rate of 6% per annum through August 31, 1982, and at the effective rates after that date. When a participant in the portable benefit package who received a refund which included a distribution of employer

1 contributions repays a refund pursuant to this Section,
2 one-half of the amount repaid shall be deemed the member's
3 reinstated accumulated normal and additional contributions and
4 the other half shall be allocated as an employer contribution
5 to the System, except that any amount repaid for previously
6 purchased military service credit under Section 15-113.3 shall
7 be accounted for as such.

8 (c) If a participant covered under the traditional benefit
9 package has made survivors insurance contributions, but has no
10 survivors insurance beneficiary upon retirement, he or she
11 shall be entitled to elect a refund of the accumulated
12 survivors insurance contributions, or to elect an additional
13 annuity the value of which is equal to the accumulated
14 survivors insurance contributions. This election must be made
15 prior to the date the person's retirement annuity is approved
16 by the System.

17 (d) A participant, upon application, is entitled to a
18 refund of his or her accumulated additional contributions
19 attributable to the additional contributions described in the
20 last sentence of subsection (c) of Section 15-157. Upon the
21 acceptance of such a refund of accumulated additional
22 contributions, the participant forfeits all rights and credits
23 which may have accrued because of such contributions.

24 (e) A participant who terminates his or her employee status
25 and elects to waive service credit under Section 15-154.2, is
26 entitled to a refund of the accumulated normal, additional and

1 survivors insurance contributions, if any, which were credited
2 the participant for this service, or to an additional annuity
3 the value of which is equal to the accumulated normal,
4 additional and survivors insurance contributions, if any;
5 except that not more than one such refund application may be
6 made during any academic year. Upon acceptance of this refund,
7 the participant forfeits all rights and credits accrued because
8 of this service.

9 (f) If a police officer or firefighter receives a
10 retirement annuity under Rule 1 or 3 of Section 15-136, he or
11 she shall be entitled at retirement to a refund of the
12 difference between his or her accumulated normal contributions
13 and the normal contributions which would have accumulated had
14 such person filed a waiver of the retirement formula provided
15 by Rule 4 of Section 15-136.

16 (g) If, at the time of retirement, a participant would be
17 entitled to a retirement annuity under Rule 1, 2, 3, 4, or 5 of
18 Section 15-136, or under Section 15-136.4, that exceeds the
19 maximum specified in clause (1) of subsection (c) of Section
20 15-136, he or she shall be entitled to a refund of the employee
21 contributions, if any, paid under Section 15-157 after the date
22 upon which continuance of such contributions would have
23 otherwise caused the retirement annuity to exceed this maximum,
24 plus compound interest at the effective rates.

25 (Source: P.A. 92-16, eff. 6-28-01; 92-424, eff. 8-17-01;
26 93-347, eff. 7-24-03.)

1 (40 ILCS 5/15-157) (from Ch. 108 1/2, par. 15-157)
2 Sec. 15-157. Employee contributions.
3 (a) Except as provided in subsection (a-5), each
4 participating employee shall make contributions towards the
5 retirement benefits payable under the retirement program
6 applicable to the employee from each payment of earnings
7 applicable to employment under this system on and after the
8 date of becoming a participant as follows: Prior to September
9 1, 1949, 3 1/2% of earnings; from September 1, 1949 to August
10 31, 1955, 5%; from September 1, 1955 to August 31, 1969, 6%;
11 from September 1, 1969, 6 1/2%. These contributions are to be
12 considered as normal contributions for purposes of this
13 Article.
14 Except as provided in subsection (a-5), each participant
15 who is a police officer or firefighter shall make normal
16 contributions of 8% of each payment of earnings applicable to
17 employment as a police officer or firefighter under this system
18 on or after September 1, 1981, unless he or she files with the
19 board within 60 days after the effective date of this
20 amendatory Act of 1991 or 60 days after the board receives
21 notice that he or she is employed as a police officer or
22 firefighter, whichever is later, a written notice waiving the
23 retirement formula provided by Rule 4 of Section 15-136. This
24 waiver shall be irrevocable. If a participant had met the
25 conditions set forth in Section 15-132.1 prior to the effective

1 date of this amendatory Act of 1991 but failed to make the
2 additional normal contributions required by this paragraph, he
3 or she may elect to pay the additional contributions plus
4 compound interest at the effective rate. If such payment is
5 received by the board, the service shall be considered as
6 police officer service in calculating the retirement annuity
7 under Rule 4 of Section 15-136. While performing service
8 described in clause (i) or (ii) of Rule 4 of Section 15-136, a
9 participating employee shall be deemed to be employed as a
10 firefighter for the purpose of determining the rate of employee
11 contributions under this Section.
12 (a-5) Beginning July 1, 2014, in lieu of the contribution
13 otherwise required under subsection (a), each Tier 1 member,
14 other than a Tier 1 member who is a police officer or
15 firefighter, shall contribute 6% of earnings toward the
16 retirement benefits payable under the retirement programs
17 applicable to the employee from each payment of earnings
18 applicable to employment under this system.
19 Beginning July 1, 2014, in lieu of the contribution
20 otherwise required under subsection (a), each Tier 1 member who
21 is a police officer or firefighter shall contribute 7.5% of
22 each payment of earnings applicable to employment as a police
23 officer or firefighter under this system, unless he or she has
24 filed a waiver with the board pursuant to subsection (a).
25 The contributions required under this subsection (a-5) are
26 to be considered normal contributions for the purposes of this

1 Article.

2 (b) Starting September 1, 1969 and, in the case of Tier 1
3 members, ending on June 30, 2014, each participating employee
4 shall make additional contributions of 1/2 of 1% of earnings to
5 finance a portion of the cost of the annual increases in
6 retirement annuity provided under Section 15-136, except that
7 with respect to participants in the self-managed plan this
8 additional contribution shall be used to finance the benefits
9 obtained under that retirement program.

10 (c) In addition to the amounts described in subsections (a)
11 and (b) of this Section, each participating employee shall make
12 contributions of 1% of earnings applicable under this system on
13 and after August 1, 1959. The contributions made under this
14 subsection (c) shall be considered as survivor's insurance
15 contributions for purposes of this Article if the employee is
16 covered under the traditional benefit package, and such
17 contributions shall be considered as additional contributions
18 for purposes of this Article if the employee is participating
19 in the self-managed plan or has elected to participate in the
20 portable benefit package and has completed the applicable
21 one-year waiting period. Contributions in excess of $80 during
22 any fiscal year beginning before August 31, 1969 and in excess
23 of $120 during any fiscal year thereafter until September 1,
24 1971 shall be considered as additional contributions for
25 purposes of this Article.

26 (d) If the board by board rule so permits and subject to

1 such conditions and limitations as may be specified in its
2 rules, a participant may make other additional contributions of
3 such percentage of earnings or amounts as the participant shall
4 elect in a written notice thereof received by the board.

5 (e) That fraction of a participant's total accumulated
6 normal contributions, the numerator of which is equal to the
7 number of years of service in excess of that which is required
8 to qualify for the maximum retirement annuity, and the
9 denominator of which is equal to the total service of the
10 participant, shall be considered as accumulated additional
11 contributions. The determination of the applicable maximum
12 annuity and the adjustment in contributions required by this
13 provision shall be made as of the date of the participant's
14 retirement.

15 (f) Notwithstanding the foregoing, a participating
16 employee shall not be required to make contributions under this
17 Section after the date upon which continuance of such
18 contributions would otherwise cause his or her retirement
19 annuity to exceed the maximum retirement annuity as specified
20 in clause (1) of subsection (c) of Section 15-136.

21 (g) A participant ~~participating employee~~ may make
22 contributions for the purchase of service credit under this
23 Article; however, only a participating employee may make
24 optional contributions under subsection (b) of Section
25 15-157.1 of this Article.

26 (h) A Tier 2 member shall not make contributions on

1 earnings that exceed the limitation as prescribed under
2 subsection (b) of Section 15-111 of this Article.
3 (Source: P.A. 98-92, eff. 7-16-13; 98-599, eff. 6-1-14.)

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 3, 2015, he caused a copy of PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT to be served on the persons indicated below via email as indicated below and via U.S. mail by causing a copy of same to be deposited in the U.S. mail drop located at 311 S. Wacker Drive, Chicago, Illinois 60606, before 5:00 p.m., in postage prepaid envelopes addressed to the persons and with the addresses indicated below:

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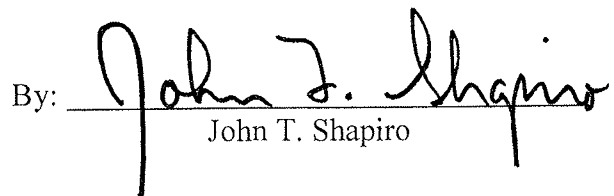
By: 
John T. Shapiro