



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1325

Introduced 2/9/2011, by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

- 40 ILCS 5/Art. 25 heading new
- 40 ILCS 5/25-101 new
- 40 ILCS 5/25-102 new
- 30 ILCS 805/8.35 new

Amends the Illinois Pension Code. Authorizes each pension fund and retirement system to establish and administer an optional retirement plan. Sets forth requirements for the plans. Authorizes each employer that is subject to the Code to make an irrevocable election to participate in the plan. Requires each fund to solicit proposals to provide administrative services and funding vehicles for the plan. Requires those proposals to be assessed using specified criteria. Authorizes employees to direct the investment of their plan balances. Indemnifies fund fiduciaries. Also contains provisions concerning: participation in the plan; establishment of an initial account balance; duplication of service credit; required contributions; termination; vesting; withdrawal; return to service; benefit amounts; and the making of plan elections. Amends the State Mandates Act to require implementation without reimbursement.

LRB097 08190 JDS 48315 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 adding
5 Article 25 as follows:

6 (40 ILCS 5/Art. 25 heading new)

7 ARTICLE 25. OPTIONAL RETIREMENT PLANS

8 (40 ILCS 5/25-101 new)

9 Sec. 25-101. Authorization.

10 (a) The General Assembly finds that it is important for
11 every public pension fund to have all of the tools that it
12 requires to properly manage the retirement benefits of
13 participants and that each fund should have the flexibility to
14 provide a defined contribution plan as an alternative for
15 eligible employees who elect not to participate in a defined
16 benefit retirement program provided under this Code.
17 Accordingly, each pension fund is hereby authorized to
18 establish and administer an optional retirement plan, which
19 shall offer participating employees the opportunity to
20 accumulate assets for retirement through a combination of
21 employee and employer contributions that may be invested in
22 mutual funds, collective investment funds, or other investment

1 products and used to purchase annuity contracts, fixed,
2 variable, or a combination thereof. The plan must be qualified
3 under the Internal Revenue Code. For purposes of this Section,
4 "pension fund" means any public pension fund, annuity and
5 benefit fund, or retirement system established under this Code.

6 (b) Each employer subject to this Code may elect to adopt
7 the optional retirement plan established under this Section;
8 this election is irrevocable. An employer's election to adopt
9 the optional retirement plan makes available to the eligible
10 employees of that employer the elections described in Section
11 25-102.

12 Each pension fund electing to offer an optional retirement
13 plan shall be the plan sponsor for the optional retirement plan
14 and shall prepare a plan document and prescribe rules and
15 procedures that are necessary or desirable for the
16 administration of the optional retirement plan. Consistent
17 with its fiduciary duty to the participants and beneficiaries
18 of the optional retirement plan, the pension fund may delegate
19 aspects of plan administration as it sees fit to one or more
20 companies authorized to do business in this State, to the
21 employers, or to a combination of both.

22 (c) The pension fund, in consultation with the employers,
23 shall solicit proposals to provide administrative services and
24 funding vehicles for the optional retirement plan from
25 insurance and annuity companies and mutual fund companies,
26 banks, trust companies, or other financial institutions

1 authorized to do business in this State. In reviewing the
2 proposals, each pension fund shall consider, among other
3 things, the following criteria:

4 (1) the proposed costs to participants, including, but
5 not limited to, asset-based fees, sales loads, and
6 surrender charges;

7 (2) the experience of the company in providing similar
8 optional retirement plans in the public and private
9 sectors;

10 (3) the ability of the company to provide lifetime
11 income to participants in the optional retirement plan;

12 (4) the suitability of the benefits to the needs and
13 interests of the participating employees and the employer;
14 and

15 (5) the financial stability of the company.

16 The pension fund, in consultation with the employers, shall
17 determine whether to approve a company to provide the services.
18 Each service provider shall be approved periodically and may
19 continue to provide administrative services and funding
20 vehicles for the optional retirement plan only if it continues
21 to be an approved company under contract with the pension fund.

22 (d) Employees who are participating in the program must be
23 allowed to direct the transfer of their account balances among
24 the various investment options offered, subject to applicable
25 contractual provisions. The participant shall not be deemed a
26 fiduciary by reason of providing investment direction. A person

1 who is a fiduciary shall not be liable for any loss resulting
2 from investment direction by the participant and shall not be
3 deemed to have breached any fiduciary duty by acting in
4 accordance with that direction. Neither the pension fund nor
5 the employer guarantees any of the investments in the
6 employee's account balances.

7 (e) An employee eligible to participate in the optional
8 retirement plan must make a written election in accordance with
9 the provisions of Section 25-102 and the procedures established
10 by the pension fund. Participation in the optional retirement
11 plan by an electing employee shall begin on the first day of
12 the first pay period following the later of the date the
13 employee's election is filed with the pension fund or the
14 effective date as of which the employee's employer begins to
15 offer participation in the optional retirement plan. An
16 employee's participation in any other retirement program
17 administered by the pension fund shall terminate on the date
18 that participation in the optional retirement plan begins.

19 An employee who has elected to participate in the optional
20 retirement plan under this Section must continue participation
21 while employed in an eligible position, and may not participate
22 in any other retirement program administered by the pension
23 fund while employed by that employer unless the optional
24 retirement plan is terminated in accordance with subsection (i)
25 of this Section.

26 Participation in the optional retirement plan under this

1 Section shall constitute membership in the pension fund.

2 A participant under this Section is entitled to the
3 benefits of Article 20 of this Code.

4 (f) If at the time an employee elects to participate in the
5 optional retirement plan he or she has rights and credits in
6 the pension fund due to previous participation in the
7 traditional benefit package, the pension fund shall establish
8 for the employee an opening account balance in the optional
9 retirement plan, equal to the amount of contribution refund
10 that the employee would be eligible to receive if the employee
11 terminated employment on that date and elected a refund of
12 contributions, except that this hypothetical refund shall
13 include interest at the effective rate for the respective
14 years. The pension fund shall transfer assets from the defined
15 benefit retirement program to the optional retirement plan, as
16 a tax-free transfer in accordance with Internal Revenue Service
17 guidelines, for purposes of funding the employee's opening
18 account balance.

19 (g) Notwithstanding any other provision of this Code, an
20 employee may not purchase or receive service or service credit
21 applicable to any other retirement program administered by the
22 pension fund for any period during which the employee was a
23 participant in the optional retirement plan established under
24 this Section.

25 (h) The optional retirement plan shall be funded by
26 contributions from employees participating in the optional

1 retirement plan and employer contributions as provided in this
2 Section.

3 The contribution rate for employees participating in the
4 optional retirement plan under this Section shall be equal to
5 the employee contribution rate for other participants in the
6 pension fund. This required contribution shall be made as an
7 "employer pick up" under Section 414(h) of the Internal Revenue
8 Code of 1986 or any successor Section thereof. Any employee
9 participating in the pension fund's traditional benefit
10 package prior to his or her election to participate in the
11 optional retirement plan shall continue to have the employer
12 pick up the required contributions. However, the amounts picked
13 up after the election of the optional retirement plan shall be
14 remitted to and treated as assets of the optional retirement
15 plan. In no event shall an employee have an option of receiving
16 these amounts in cash. Employees may make additional
17 contributions to the optional retirement plan in accordance
18 with procedures prescribed by the pension fund, to the extent
19 permitted under rules prescribed by the pension fund.

20 An amount of the employer's contribution, not exceeding 1%
21 of the participating employee's salary, shall be used for the
22 purpose of providing the disability benefits of the pension
23 fund to the employee. Prior to the beginning of each plan year
24 under the optional retirement plan, the pension fund shall
25 determine, as a percentage of salary, the amount of employer
26 contributions to be allocated during that plan year for

1 providing disability benefits for employees in the optional
2 retirement plan.

3 (i) Any optional retirement plan authorized under this
4 Section may be terminated by the pension fund, subject to the
5 terms of any relevant contracts, and the pension fund shall
6 have no obligation to reestablish the optional retirement plan
7 under this Section. This Section does not create a right to
8 continued participation in any optional retirement plan set up
9 by the pension fund under this Section. If the optional
10 retirement plan is terminated, the participants shall have the
11 right to participate in one of the other retirement programs
12 offered by the pension fund and receive service credit in the
13 other retirement program for any years of employment following
14 the termination.

15 (j) Every pension fund adopting an optional retirement plan
16 shall establish when a participant in the optional retirement
17 plan becomes vested in the employer contributions credited to
18 his or her accounts in the optional retirement plan.

19 A participant in the optional retirement plan who receives
20 a distribution of his or her vested amounts from the optional
21 retirement plan while not yet eligible for retirement under
22 this Article (and Article 20, if applicable) shall forfeit all
23 service credit and accrued rights in the pension fund; if
24 subsequently re-employed, the participant shall be considered
25 a new employee. If a former participant again becomes a
26 participating employee (or becomes employed by a participating

1 system under Article 20 of this Code) and continues as such for
2 at least 2 years, all rights, service credits, and previous
3 status as a participant shall be restored upon repayment of the
4 amount of the distribution, without interest.

5 (k) If an employee who is vested in employer contributions
6 terminates employment, the employee shall be entitled to a
7 benefit that is based on the account values attributable to
8 both employer and employee contributions and any investment
9 return thereon.

10 If an employee who is not vested in employer contributions
11 terminates employment, the employee shall be entitled to a
12 benefit based solely on the account values attributable to the
13 employee's contributions and any investment return thereon,
14 and the employer contributions and any investment return
15 thereon shall be forfeited. Any employer contributions which
16 are forfeited shall be held in escrow by the company investing
17 those contributions and shall be used as directed by the
18 pension fund for future allocations of employer contributions
19 or for the restoration of amounts previously forfeited by
20 former participants who again become participating employees.

21 (40 ILCS 5/25-102 new)

22 Sec. 25-102. Retirement program elections.

23 (a) Effective as of the date that an employer elects, as
24 described in Section 25-101, to offer to its employees the
25 optional retirement plan as an alternative to the traditional

1 benefit package, each of that employer's eligible employees (as
2 defined in subsection (b) of this Section) shall be given the
3 choice to elect which retirement program he or she wishes to
4 participate in with respect to all periods of covered
5 employment occurring on and after the effective date of the
6 employee's election. The retirement program election made by an
7 eligible employee must be made in writing, in the manner
8 prescribed by the pension fund, and within the time period
9 described in subsection (c) or (c-1) of this Section.

10 The employee election authorized by this Section is a
11 one-time, irrevocable election. If an employee terminates
12 employment after making the election provided under this
13 subsection (a), then upon his or her subsequent re-employment
14 with an employer the original election shall automatically
15 apply to him or her, provided that the employer is then a
16 participating employer as described in Section 25-101.

17 An eligible employee who fails to make this election shall,
18 by default, participate in the traditional benefit package.

19 (b) "Eligible employee" means an employee who is either a
20 currently eligible employee or a newly eligible employee. For
21 purposes of this Section, a "currently eligible employee" is an
22 employee who is employed by an employer on the effective date
23 on which the employer offers to its employees the optional
24 retirement plan as an alternative to the traditional benefit
25 package. A "newly eligible employee" is an employee who first
26 becomes employed by an employer after the effective date on

1 which the employer offers its employees the optional retirement
2 plan. A newly eligible employee participates in the traditional
3 benefit package until he or she makes an election to
4 participate in the optional retirement plan. If an employee
5 does not elect to participate in the optional retirement plan,
6 he or she shall continue to participate in the traditional
7 benefit package by default.

8 (c) A currently eligible employee must make this election
9 within one year after the effective date of the employer's
10 adoption of the optional retirement plan.

11 A newly eligible employee must make this election within 6
12 months after the date on which the pension fund receives the
13 report of status certification from the employer. If an
14 employee elects to participate in the optional retirement plan,
15 no employer contributions shall be remitted to the optional
16 retirement plan when the employee's account balance transfer is
17 made. Employer contributions to the optional retirement plan
18 shall commence as of the first pay period that begins after the
19 pension fund receives the employee's election.

20 (c-1) A newly eligible employee who, prior to the effective
21 date of this amendatory Act of the 97th General Assembly, fails
22 to make the election within the period provided under
23 subsection (c) and participates by default in the traditional
24 benefit package may make a late election to participate in the
25 optional retirement plan instead of the traditional benefit
26 package at any time within 6 months after the effective date of

1 this amendatory Act of the 97th General Assembly.

2 (d) An eligible employee shall be provided with written
3 information prepared or prescribed by the pension fund which
4 describes the employee's retirement program choices. The
5 eligible employee shall be offered an opportunity to receive
6 counseling from the pension fund prior to making his or her
7 election. This counseling may consist of videotaped materials,
8 group presentations, individual consultation with an employee
9 or authorized representative of the pension fund in person or
10 by telephone or other electronic means, or any combination of
11 these methods.

12 Section 90. The State Mandates Act is amended by adding
13 Section 8.35 as follows:

14 (30 ILCS 805/8.35 new)

15 Sec. 8.35. Exempt mandate. Notwithstanding Sections 6 and 8
16 of this Act, no reimbursement by the State is required for the
17 implementation of any mandate created by this amendatory Act of
18 the 97th General Assembly.