



Sen. Kirk W. Dillard

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09700HB5078sam004

LRB097 16349 EFG 70188 a

1 AMENDMENT TO HOUSE BILL 5078

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5078, AS AMENDED,  
3 immediately above Section 5, by inserting the following:

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

1 contributions since their receipt.

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

4 (40 ILCS 5/7-139) (from Ch. 108 1/2, par. 7-139)

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

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

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

18 If the effective date of participation for the  
19 participating municipality or participating  
20 instrumentality is on or before January 1, 1998, creditable  
21 service shall be granted for the entire period of prior  
22 service with that employer without any employee  
23 contribution.

24 If the effective date of participation for the

1 participating municipality or participating  
2 instrumentality is after January 1, 1998, creditable  
3 service shall be granted for the last 20% of the period of  
4 prior service with that employer, but no more than 5 years,  
5 without any employee contribution. A participating  
6 employee may establish creditable service for the  
7 remainder of the period of prior service with that employer  
8 by making an application in writing, accompanied by payment  
9 of an employee contribution in an amount determined by the  
10 Fund, based on the employee contribution rates in effect at  
11 the time of application for the creditable service and the  
12 employee's salary rate on the effective date of  
13 participation for that employer, plus interest at the  
14 effective rate from the date of the prior service to the  
15 date of payment. Application for this creditable service  
16 may be made at any time while the employee is still in  
17 service.

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

1 participation.

2 Any person who has withdrawn from the service of a  
3 participating municipality or participating  
4 instrumentality prior to the effective date, who reenters  
5 the service of the same municipality or participating  
6 instrumentality after the effective date and becomes a  
7 participating employee is entitled to creditable service  
8 for prior service as otherwise provided in this subdivision  
9 (a) (1) only if he or she renders 2 years of service as a  
10 participating employee after the effective date.  
11 Application for such service must be made while in a  
12 participating status. The salary rate to be used in the  
13 calculation of the required employee contribution, if any,  
14 shall be the employee's salary rate at the time of first  
15 reentering service with the employer after the employer's  
16 effective date of participation.

17 2. For current service, each participating employee  
18 shall be credited with:

19 a. Additional credits of amounts equal to each  
20 payment of additional contributions received from him  
21 under Section 7-173, as of the date the corresponding  
22 payment of earnings is payable to him.

23 b. Normal credits of amounts equal to each payment  
24 of normal contributions received from him, as of the  
25 date the corresponding payment of earnings is payable  
26 to him, and normal contributions made for the purpose

1 of establishing out-of-state service credits as  
2 permitted under the conditions set forth in paragraph 6  
3 of this subsection (a).

4 c. Municipality credits in an amount equal to 1.4  
5 times the normal credits, except those established by  
6 out-of-state service credits, as of the date of  
7 computation of any benefit if these credits would  
8 increase the benefit.

9 d. Survivor credits equal to each payment of  
10 survivor contributions received from the participating  
11 employee as of the date the corresponding payment of  
12 earnings is payable, and survivor contributions made  
13 for the purpose of establishing out-of-state service  
14 credits.

15 3. For periods of temporary and total and permanent  
16 disability benefits, each employee receiving disability  
17 benefits shall be granted creditable service for the period  
18 during which disability benefits are payable. Normal and  
19 survivor credits, based upon the rate of earnings applied  
20 for disability benefits, shall also be granted if such  
21 credits would result in a higher benefit to any such  
22 employee or his beneficiary.

23 4. For authorized leave of absence without pay: A  
24 participating employee shall be granted credits and  
25 creditable service for periods of authorized leave of  
26 absence without pay under the following conditions:

1           a. An application for credits and creditable  
2 service is submitted to the board while the employee is  
3 in a status of active employment.

4           b. Not more than 12 complete months of creditable  
5 service for authorized leave of absence without pay  
6 shall be counted for purposes of determining any  
7 benefits payable under this Article.

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

20           d. Benefits under the provisions of Sections  
21 7-141, 7-146, 7-150 and 7-163 shall become payable to  
22 employees on authorized leave of absence, or their  
23 designated beneficiary, only if such leave of absence  
24 is creditable hereunder, and if the employee has at  
25 least one year of creditable service other than the  
26 service granted for leave of absence. Any employee

1 contributions due may be deducted from any benefits  
2 payable.

3 e. No credits or creditable service shall be  
4 allowed for leave of absence without pay during any  
5 period of prior service.

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

26 Any participating employee who left his employment

1 with a municipality or participating instrumentality to  
2 serve in the armed forces of the United States and who  
3 again became a participating employee within 90 days after  
4 completion of full time active duty by entering the service  
5 of a different municipality or participating  
6 instrumentality, which has elected to allow creditable  
7 service for periods of military service under the preceding  
8 paragraph, shall also be allowed creditable service for his  
9 period of military service on the same terms that would  
10 apply if he had been employed, before entering military  
11 service, by the municipality or instrumentality which  
12 employed him after he left the military service and the  
13 employer costs arising in relation to such grant of  
14 creditable service shall be charged to and paid by that  
15 municipality or instrumentality.

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

26 5.1. In addition to any creditable service established



1 under paragraph 5 of this subsection (a), creditable  
2 service may be granted for up to 48 months of service in  
3 the armed forces of the United States.

4 In order to receive creditable service for military  
5 service under this paragraph 5.1, a participating employee  
6 must (1) apply to the Fund in writing and provide evidence  
7 of the military service that is satisfactory to the Board;  
8 (2) obtain the written approval of the current employer;  
9 and (3) make contributions to the Fund equal to (i) the  
10 employee contributions that would have been required had  
11 the service been rendered as a member, plus (ii) an amount  
12 determined by the board to be equal to the employer's  
13 normal cost of the benefits accrued for that military  
14 service, plus (iii) interest on items (i) and (ii) from the  
15 date of first membership in the Fund to the date of  
16 payment. The required interest shall be calculated at the  
17 regular interest rate.

18 The changes made to this paragraph 5.1 by Public Acts  
19 95-483 and 95-486 apply only to participating employees in  
20 service on or after August 28, 2007 (the effective date of  
21 those Public Acts).

22 6. For out-of-state service: Creditable service shall  
23 be granted for service rendered to an out-of-state local  
24 governmental body under the following conditions: The  
25 employee had participated and has irrevocably forfeited  
26 all rights to benefits in the out-of-state public employees

1 pension system; the governing body of his participating  
2 municipality or instrumentality authorizes the employee to  
3 establish such service; the employee has 2 years current  
4 service with this municipality or participating  
5 instrumentality; the employee makes a payment of  
6 contributions, which shall be computed at 8% (normal) plus  
7 2% (survivor) times length of service purchased times the  
8 average rate of earnings for the first 2 years of service  
9 with the municipality or participating instrumentality  
10 whose governing body authorizes the service established  
11 plus interest at the effective rate on the date such  
12 credits are established, payable from the date the employee  
13 completes the required 2 years of current service to date  
14 of payment. In no case shall more than 120 months of  
15 creditable service be granted under this provision.

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

1 municipality filed with the Fund before January 1, 2002.

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

22 8. For accumulated unused sick leave: A participating  
23 employee who is applying for a retirement annuity shall be  
24 entitled to creditable service for that portion of the  
25 employee's accumulated unused sick leave for which payment  
26 is not received, as follows:

1           a. Sick leave days shall be limited to those  
2 accumulated under a sick leave plan established by a  
3 participating municipality or participating  
4 instrumentality which is available to all employees or  
5 a class of employees.

6           b. Except as provided in item b-1, only sick leave  
7 days accumulated with a participating municipality or  
8 participating instrumentality with which the employee  
9 was in service within 60 days of the effective date of  
10 his retirement annuity shall be credited; If the  
11 employee was in service with more than one employer  
12 during this period only the sick leave days with the  
13 employer with which the employee has the greatest  
14 number of unpaid sick leave days shall be considered.

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

1           been reached.

2           c. The creditable service granted shall be  
3 considered solely for the purpose of computing the  
4 amount of the retirement annuity and shall not be used  
5 to establish any minimum service period required by any  
6 provision of the Illinois Pension Code, the effective  
7 date of the retirement annuity, or the final rate of  
8 earnings.

9           d. The creditable service shall be at the rate of  
10 1/20 of a month for each full sick day, provided that  
11 no more than 12 months may be credited under this  
12 subdivision 8.

13           e. Employee contributions shall not be required  
14 for creditable service under this subdivision 8.

15           f. Each participating municipality and  
16 participating instrumentality with which an employee  
17 has service within 60 days of the effective date of his  
18 retirement annuity shall certify to the board the  
19 number of accumulated unpaid sick leave days credited  
20 to the employee at the time of termination of service.

21           9. For service transferred from another system:  
22 Credits and creditable service shall be granted for service  
23 under Article 3, 4, 5, ~~8~~, 14, or 16 of this Act, to any  
24 active member of this Fund, and to any inactive member who  
25 has been a county sheriff, upon transfer of such credits  
26 pursuant to Section 3-110.3, 4-108.3, 5-235, ~~8-226.7,~~

1 14-105.6, or 16-131.4, and payment by the member of the  
2 amount by which (1) the employer and employee contributions  
3 that would have been required if he had participated in  
4 this Fund as a sheriff's law enforcement employee during  
5 the period for which credit is being transferred, plus  
6 interest thereon at the effective rate for each year,  
7 compounded annually, from the date of termination of the  
8 service for which credit is being transferred to the date  
9 of payment, exceeds (2) the amount actually transferred to  
10 the Fund. Such transferred service shall be deemed to be  
11 service as a sheriff's law enforcement employee for the  
12 purposes of Section 7-142.1.

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

1 shall be reduced by a corresponding amount in accordance  
2 with the rules and procedures established under this  
3 paragraph 10.

4 The board shall establish by rule the manner of making  
5 the calculation required under this paragraph 10, taking  
6 into account the appropriate actuarial assumptions; the  
7 member's service, age, and salary history; the level of  
8 funding of the employer; and any other factors that the  
9 board determines to be relevant.

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

1           notwithstanding the provisions of Article 3 terminating  
2           all transferred credits on the date of transfer.

3           (b) Creditable service - amount:

4           1. One month of creditable service shall be allowed for  
5           each month for which a participating employee made  
6           contributions as required under Section 7-173, or for which  
7           creditable service is otherwise granted hereunder. Not  
8           more than 1 month of service shall be credited and counted  
9           for 1 calendar month, and not more than 1 year of service  
10          shall be credited and counted for any calendar year. A  
11          calendar month means a nominal month beginning on the first  
12          day thereof, and a calendar year means a year beginning  
13          January 1 and ending December 31.

14          2. A seasonal employee shall be given 12 months of  
15          creditable service if he renders the number of months of  
16          service normally required by the position in a 12-month  
17          period and he remains in service for the entire 12-month  
18          period. Otherwise a fractional year of service in the  
19          number of months of service rendered shall be credited.

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

23          (c) No application for correction of credits or creditable  
24          service shall be considered unless the board receives an  
25          application for correction while (1) the applicant is a  
26          participating employee and in active employment with a



1 participating municipality or instrumentality, or (2) while  
2 the applicant is actively participating in a pension fund or  
3 retirement system which is a participating system under the  
4 Retirement Systems Reciprocal Act. A participating employee or  
5 other applicant shall not be entitled to credits or creditable  
6 service unless the required employee contributions are made in  
7 a lump sum or in installments made in accordance with board  
8 rule.

9 (d) Upon the granting of a retirement, surviving spouse or  
10 child annuity, a death benefit or a separation benefit, on  
11 account of any employee, all individual accumulated credits  
12 shall thereupon terminate. Upon the withdrawal of additional  
13 contributions, the credits applicable thereto shall thereupon  
14 terminate. Terminated credits shall not be applied to increase  
15 the benefits any remaining employee would otherwise receive  
16 under this Article.

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

18 (40 ILCS 5/8-226.7 rep.)

19 Section 3. The Illinois Pension Code is amended by  
20 repealing Section 8-226.7."; and

21 immediately above Section 99, by inserting the following:

22 "Section 97. Severability. The provisions of this Act are  
23 severable under Section 1.31 of the Statute on Statutes."