No. 129471

IN THE SUPREME COURT OF ILLINOIS

ARLINGTON HEIGHTS POLICE; PENSION FUND, et al.,	) On Petition for Leave to Appeal) from the Appellate Court of Illinois) Second District, No. 2-22-0198
Plaintiffs-Appellants,	) There Heard on Appeal from the
v.	) Circuit Court of Kane County,) Illinois, Case No. 2021 CH 55
JAY ROBERT "J.B." PRITZKER, et al.	) Honorable Robert K. Villa) Judge Presiding
Defendants-Appellees.	)

BRIEF OF PLAINTIFFS-APPELLANTS

Daniel F. Konicek (#6205408)
Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655
dan@konicekdillonlaw.com
amanda@konicekdillonlaw.com
Attorneys for Plaintiffs-Appellants

ORAL ARGUMENT REQUESTED

E-FILED
6/27/2023 1:53 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE ACTION AND JUDGMENT APPEALED FROM

This case is about whether Public Act 101-0610, which strips Plaintiffs of their authority to make decisions regarding their own retirement assets, transfers that authority (and those assets) to two newly-created, state-wide "Pension Investment Funds," and requires the individual funds to bear the cost of the transfers, violates the Pension Protection Clause and/or the Takings Clause of the Illinois Constitution. This appeal is not based upon the verdict of a jury but rather seeks review of the Sixteenth Circuit and Second Appellate District's findings regarding the constitutionality of Public Act 101-0610.

ISSUES PRESENTED FOR REVIEW

1. Whether the Second District erred in finding that voting for pension board members is not a "benefit" subject to the Pension Protection Clause given this Court's ruling in *Williamson County Board of Commissioners v. Board of Trustees of the Illinois Municipal Retirement Fund*.

2. Whether the Second District erred in finding that requiring Plaintiffs to pay for the consolidated funds' startup costs, administration, operation, and transition costs does not "impair or diminish" their funds.

3. Whether the Second District erred in finding that Plaintiffs "do not own the funds that the Act requires to be transferred," such that the Takings Clause is not implicated.

STANDARD OF REVIEW

"We note that statutes are presumptively constitutional and the party challenging the validity of a statute bears the burden of rebutting this presumption by establishing a clear constitutional violation. We will uphold the constitutional validity of a statute whenever reasonably possible." *Carmichael v. Laborers' & Retirement Bd. Employees' Annuity & Benefit Fund of Chicago*, 2018 IL 122793, ¶24. "It is well established, however, that, where there is any question as to the legislative intent and clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule applies with equal force to interpretations of the provisions of the pension protection clause of our state constitution." *Carmichael v. Laborers' & Retirement Bd. Employees' Annuity & Benefit Fund of Chicago*, 2018 IL 122793, ¶24. "Thus, to the extent that there may be any lingering doubt about the meaning or effect of the provisions at issue in this case, we must resolve that doubt in favor of the members of this State's public retirement system." *Id.*

The *de novo* standard of review is applied to issues of statutory interpretation and summary judgment rulings. *Performance Marketing Ass'n, Inc. v. Hamer*, 2013 IL 114496, ¶12.

STATEMENT OF JURISDICTION

On May 25, 2022, the trial court entered a written Order granting Defendants' Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment. (C609-623). On June 1, 2022, Plaintiffs timely filed their Notice of Appeal. (C626).

The Second District did not hear oral argument. On February 7, 2023, the Second District issued its Opinion affirming the circuit court's decision to grant summary judgment and finding that Public Act 101-0610 does not violate the Pension Protection Clause or the Takings Clause of the Illinois Constitution. (A1-11). No petition for rehearing was filed in the Second District Appellate Court.

On March 14, 2023, Plaintiffs timely filed their Petition for Leave to Appeal. Plaintiffs' Petition was allowed by this Court on May 24, 2023.

STATUTES INVOLVED

Public Act 101-610.

(See Appendix – A-000049 – A-000097).

40 ILCS 5/1 – Illinois Pension Code

(See Appendix – A-000098 – A-000103).

40 ILCS 5/3 – Police Pension Fund – Municipalities 500,000 and Under

(See Appendix – A-000104 – A-000117).

40 ILCS 5/4 – Firefighters Pension Fund – Municipalities 500,000 and Under

(See Appendix – A-000118 – A-000132).

Pension Protection Clause. ILCS Const. Art. 13, §5.

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

Takings Clause. ILCS Const. Art. 1, §15.

"Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law."

STATEMENT OF FACTS

Public Act 101-0610 ("the Act") eliminated Illinois' locally-controlled suburban and downstate police and firefighter pension funds' authority over their investments and transferred that authority to two consolidated statewide funds – one for police and one for firefighters. (C610).

I. Statutory Background

A. Pre-Act – Police and Firefighter Pension Funds Locally Controlled

Prior to the Act, the local police and fire pension funds' assets were solely comprised of amounts derived from local taxes, police officer and firefighter contributions, and such other funds, real property, and personal property as were received by the local boards. See 40 ILCS 5/3-125 (2015) and 40 ILCS 5/4-118 (2019). The board of trustees for each of those funds was charged with the fiduciary duty to "control and manage" those assets, including the exclusive control and management of "investment expenditures and income, including interest dividend, capital gains, and other distributions of the investments. 40 ILCS 5/3-132 (1997), 40 ILCS 5/4-123 (1997). Indeed, the boards of trustees of Article 3 and 4 local pension funds were statutorily obligated to invest their assets "with the care, skill, prudence, and diligence that a prudent person …would use." 40 ILCS 5/1-113.1. In connection with that duty, the board of trustees of the local pension funds could, and under certain circumstances were required to, appoint investment advisors who would likewise serve as a fiduciary to the pension fund. 40 ILCS 5/1-113.5. Smaller funds were limited

in the types of investment that could be made, with more and more investment options permitted as funds had correspondingly increasing levels of assets under management. See 40 ILCS 5/1-113.1 – 40 ILCS 5/1-113.4.

The board of trustees of a local pension fund responsible for investing the fund's assets (and/or selecting and appointing the investment advisor) was to be selected by, and only by, those within the applicable local municipality. More specifically, pursuant to the statute, the board of trustees for local police funds consisted of five members, where two members were selected by the mayor/president of the municipality, two were to be selected by the active police officers participating in the local fund, and the fifth member was to be selected by the beneficiaries of that local fund. 40 ILCS 5/3-128. The board of trustees for local fire funds also consisted of five members, where two members were selected by the mayor/president of the municipality, two were to be selected by the active firefighters participating in the local fund, and the fifth member was to be selected by the retired firefighters in the local fund. 40 ILCS 5/4-121 (also noting that "retired" firefighters included firefighters "receiving a disability pension"). In other words, no one from outside the municipality or its local police or fire department had any say in who would be a member of the board of trustees for that municipality's local police or fire fund, and in turn, no one from outside the municipality had any say in who would be responsible for the management of the fund's assets.

The local police and firefighter pension funds' assets could not be used "to pay the costs and expenses incurred in the operation and administration of" any other fund. See, e.g., 40 ILCS 5/22B-118 and 40 ILCS 5/22C-118. Likewise, the local funds were not responsible for any costs to transition their funds to any other entity. See, e.g., 40 ILCS 5/22B-120(h) and 40 ILCS 5/22C-120(h).

B. The Governor's Task Force and its Report

On October 10, 2019, the Governor's Pension Consolidation Feasibility Task Force issued its report. (C125-146). In that report, the Pension Consolidation Feasibility Task Force stated that the large number of small suburban and downstate local police and fire pension funds were "unable to gain access to investment opportunities that provide the highest returns and competitive investment fees." (C104; C127). (As noted above, the investment opportunities available to smaller local funds were circumscribed by statute.) However, the Task Force's report did not indicate whether it considered the effect of removing those statutory limitations on the smaller funds. (C125-146). Additionally, the Task Force acknowledged that Illinois had fifteen (15) other pension systems outside of the suburban and downstate police and fire funds that presented "significant financial burdens" despite being "larger funds." (C128).

Indeed, despite noting that the suburban and downstate funds faced systematic disparities because of their limited sizes and statutory constraints,

the Task Force conceded that these suburban and downstate pension funds were 55% funded on average, whereas the much larger Chicago and Cook County plans were only 42.4% funded on average. (C133; C135). Moreover, the Task Force found that other statewide plans averaged only a 48.75% funding level - despite those funds being unencumbered by the "the systematic limitations" claimed to be depressing the performance of the suburban and downstate police and fire funds. (C136). The Task Force concluded: "When IMRF is excluded, the statewide systems averaged a 39.18% funded ratio in FY 2016, which is below the average of all Illinois pension plans. This makes Illinois one of the most underfunded for state pension systems in the country." (C136).

In its Report, the Task Force analyzed investment returns for Chicago/Cook County and statewide plans from 2012 to 2016 and compared it with the investment returns for the suburban and downstate funds from 2004 to 2013. (C132; C136). This analysis therefore **omitted the losses** experienced by the Chicago/Cook County and statewide plans due to the 2007-2009 Great Recession following the burst of the U.S. housing bubble and subsequent global financial crisis. Likewise, this analysis **omitted the gains** made by the suburban and downstate funds during 2013-2016 period of economic growth, where real GDP grew over 2%, the unemployment rate fell 2.5%, and median family income grew over 10 percent. (C132; C136). Even so, under this analysis, the Task Force conceded that the five state-funded plans' 6.18%

investment return during this time period was only "slightly" better than the average of all state and local funds. (C136).

Importantly, the Task Force's report did not contain any analysis regarding the cost of consolidation, the manner by which that cost would be funded, and the expense associated with effectively creating two "mutual funds" with paid staff, executives, and "other vendors, such as custodians . . . consultants, landlords and bonding companies," much less the cost of borrowing up to $15 million to effectuate the consolidation. (C125-146). Instead, the Task Force merely compared the 2013 investment expenses of the suburban and downstate local funds to the 2018 investment expenses of IMRF and the Illinois State Board of Investment.

Last, the Task Force's Report did not discuss the impact on the individuals regarding the loss of control over their investment assets and the ability to elect board members and hire financial advisors; instead, it merely concluded that "Each fund would be governed by a board with equal representation of employees and employers…Each of the two consolidated funds will be held in independent trusts, separate from the State Treasury, with sole governance provided by their respective boards." (C127-128).

C. The Act

The State of Illinois subsequently passed Public Act 101-0610, which adopted the Task Force's recommendations, eliminated the suburban and downstate police and firefighter pension funds, and put in place a plan for the

consolidation of those funds into a statewide fund. The Act created the two "Pension Investment Funds," and authorizes them to borrow up to $15 million from the Illinois Finance Authority "to fund the transition process." 40 ILCS 5/22B-120(h) and 40 ILCS 5/22C-120(h). Notably, the Act provides that the Pension Investment Funds "shall apply moneys derived from the [local] pension fund[s'] assets…to pay the costs and expenses incurred in the operation and administration of the [Pension Investment] Fund[s]."40 ILCS 5/22B-118(e), 40 ILCS 5/22C-118(e).

The Act does not provide for an equalized or proportionate level of representation. While the Act provides that all suburban and downstate officers' and firefighters' retirement assets are to be theoretically maintained in the form of a separate "account" that will rise and fall pro rata to all other assets under consolidation (see 40 ILCS 5/22B-118(c), 40 ILCS 5/22C-118(c)), no similar theoretical pro rata allocation could be maintained with regard to every police officer's and firefighter's vote for the boards of the Pension Investment Funds. Differently stated, local funds contributing more to the consolidated fund as whole are not given greater representation among the boards of the Pension Investment Funds. See 40 ILCS 5/22B-115(b), 40 ILCS 5/22C-115(b).

Finally, the Act significantly changed the manner in which individual police officers and firefighters select the individuals responsible for managing their pension funds. Prior to the Act, local police and firefighters would vote

locally for the people who would be responsible for managing their local fund's retirement assets. See 40 ILCS 5/22B-115(b), 40 ILCS 5/22C-115(b). Following the passage of the Act, boards for the Pension Investment Funds are to be selected statewide by all voting-eligible members, who may vote on only 3 of the 9 total members. *Id.* As a result, the Act substantially impacted and diluted each police officer's and firefighter's voting rights and ability to determine how their personal retirement assets are invested.

II. The Lawsuit

On February 23, 2021, Plaintiffs, comprised of approximately eighteen (18) police and firefighter pension funds as well as individual representatives from each fund, filed a Complaint for Declaratory, Injunctive and Other Relief seeking a finding that Public Act 101-0610 impermissibly diminished the State's contractual obligations and impaired and diminished Plaintiffs' voting powers and ability to control their assets in violation of the Pension Protection Clause and/or the Takings Clause of the Illinois Constitution. (C73-94).

Defendants filed a Motion to Dismiss, arguing that there was no violation of the Illinois Constitution as a matter of law. (C149-150; C151-156; C157-160). Plaintiffs filed a Response and a Counter-Motion for Summary Judgment, arguing that prior to the Act, Plaintiffs had exclusively local control over the investment decisions being made with respect to their pension assets and further that Plaintiffs' pension funds were not encumbered by up to $15,000,000 in loans, plus interest. (C260-304). Following a briefing and ruling

on the Motion to Dismiss portions of the argument, Defendants filed an amended Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment. (C444-498). Plaintiffs filed their Combined Reply and Response, and Defendants filed their Reply. (C508-556; C559-572). The trial court heard oral argument on the cross-motions for summary judgment on November 11, 2021. (R1-103).

On May 25, 2022, the trial court entered a written Order denying Plaintiffs' Motion for Summary Judgment and granting Defendants' Motion for Summary Judgment. (C609-623). Specifically, the trial court found that while the Act "significantly impacts Plaintiffs' voting rights," those same voting rights are "not presently a 'benefit' under the Pension Clause." (C612; C616). The trial court further held that the only benefit protected under the Pension Protection Clause is the **value** of the pension benefit itself. (C618-619). The trial court also held that the Takings Clause was not implicated because Plaintiffs' claim could not be tied to real property. (C622).

The trial court also entered an Order staying the enforcement of Public Act 101-610 pending the Appellate Court's review of its decision.

III. The Appeal and the Second District's Opinion

On June 1, 2022, Plaintiffs timely filed their Notice of Appeal, and the Second District entered an Order accelerating the appeal. (C626). The Appellate Court did not hear oral argument.

On February 7, 2023, the Second District issued an Opinion affirming the circuit court's judgment and finding that Public Act 101-610 did not violate the Pension Protection Clause or the Takings Clause of the Illinois Constitution. (A1-11, *Arlington Heights Police Pension Fund v. Pritzker,* 2023 IL App (2d) 220198). Specifically, the Second District Appellate Court held that voting for board members who control and invest local pension funds is not a "benefit" for purposes of the Pension Protection Clause. See *Arlington Heights Police Pension Fund v. Pritzker,* 2023 IL App (2d) 220198, ¶14 ("We determine that the ability to vote in the election of local pension board members and to have that local board control and invest local pension funds is not of the same nature and essentiality as the ability to participate in the fund, accumulate credited time, or receive health care, disability, and life insurance coverage. Voting for the local board is, at best, ancillary to a participant's receipt of the pension payment and other assets.") The Second District Appellate Court further stated: "Voting for the board members who deal with the funding of the pension fund is no more than a procedure that may have some impact on the funding; it is not a direct impact on the payment of benefits. Where the methods of funding a retirement system are not governed by the pension protection clause, we cannot say that the right to choose who invests the funds of the system is more of a protected benefit."

Additionally, the Second District Appellate Court held that requiring the local funds to bear the transition and startup costs of the new consolidated

funds did not violate the Pension Protection Clause because "The local funds are already required to pay the costs of administration of the local funds, and plaintiffs do not cite any evidence to show that the costs of administration of the new funds, even including startup costs, would be any greater." See *Arlington Heights Police Pension Fund v. Pritzker*, 2023 IL App (2d) 220198, ¶15. The Second District further stated: "We further note that the level of benefit payments is not determined by the level of funding in the fund. Member and employer contribution requirements are set in the Pension Code; if more money were to be required to pay the already-established benefits, future contribution requirements could be amended. Plaintiffs present no evidence that the Act actually reduced the funding available for the payment of benefits." *Id.*

Last, the Second District held that Plaintiffs "do not have a property right in any particular assets or level of funding" such that there could be no Takings Clause violation. *Id.*, ¶19. Specifically, the Second District held: "Plaintiffs are individual active and retiree/beneficiaries of the local funds: they have no right to the investments held by the funds; rather, they are entitled only to present or future payments from the funds. No plaintiff has any right to direct the investment of the monies held by the funds or direct that they receive any different course of payments (either in amount or frequency) beyond that established by statute and the funds. Simply put, plaintiffs do not own the funds that the Act requires to be transferred to the

new statewide police and firefighter pension investment funds." See *Arlington Heights Police Pension Fund v. Pritzker*, 2023 IL App (2d) 220198, ¶19.

In concluding, the Second District stated: "The Act does nothing more than require one type of government-created pension fund to transfer assets to another type of government-created pension fund. Plaintiffs' rights to receive benefit payments are not impacted by these transfers. As the 'property' at issue here is not the private property of the plaintiffs, the takings clause is neither relevant nor applicable here." *Id.*

ARGUMENT

I. Voting Rights Are a "Benefit" – Public Act 101-610 Violates the Pension Protection Clause

The Pension Protection Clause of the Illinois Constitution states: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, **the benefits of which shall not be diminished or impaired**." ILCS Const. Art. 1, §5 (emphasis added).

In *Williamson County Board of Commissioners v. Board of Trustees of the Illinois Municipal Retirement Fund,* this Court struck down a portion of Public Act 99-900 which enacted a new section of the Pension Code and limited county board member participation in IMRF unless, by a date certain, the local county board certified that board members are expected to work a certain specified number of hours annually (either 600 or 1000). *Williamson Cty Bd. Of Comm'rs v. Bd. Of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, ¶27, 52.

This Court specifically stated: "Our decisions have uniformly construed its [the Pension Protection Clause] plain meaning to protect **any benefit** of the enforceable contractual relationship arising from membership in one of the pension or retirement systems of the State and any local unit of government or school district from diminishment or impairment." *Id.* (emphasis added), citing *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund*, 2018 IL 122793, ¶ 25; *In re Pension Reform Litigation*, 2015 IL 118585, ¶ 45; *Kanerva v. Weems*, 2014 IL 115811, ¶ 38.

In this case, both the trial court and the Second District Appellate Court failed to appreciate the breadth of this Court's language "any benefit." In its written Order in this case, the trial court quoted from the *Williamson* opinion and acknowledged: "The language emphasized (by this Court) in the above quote appears to suggest that the 'benefits' protected under the Pension Clause must be broader than the simple payment a member is to receive upon retirement. Firstly, the term 'benefits' is plural; which, on its face, cannot be read to mean a singular (undefined) something. The *Williamson* opinion seemingly makes that more clear by referring to a 'broad' protection of 'all the benefits that flow from the contractual relationship arising from membership in a public retirement system.'" (C618). The trial court concluded, however, "A careful review, however, of each case cited with approval in *Williamson* suggests the Illinois Supreme Court does not mean what this language suggests." (C618). The trial court then concluded that the Pension Protection

Clause only applies to those public acts which "directly affect the value of a plaintiff's pension benefit." (C619).

The Second District Appellate Court failed to address the Plaintiffs' argument that *Williamson* said "any benefit," was protected not limiting it to pecuniary. Instead it simply concluded that this Court's prior decisions did not involve non-pecuniary benefits stating, "The benefits at issue in *Williamson County, Buddell*, and *Carmichael* were benefits that affected the participants' ability to continue participation (*Williamson County*) or their ability to increase their service credits (*Buddell* and *Carmichael*), thereby negatively affecting the calculation of their eventual benefit payments." See *Arlington Heights Police Pension Fund v. Pritzker*, 2023 IL App (2d) 220198, ¶12. The Second District thereafter concluded: "These are the types of benefits that flow from the contractual relationship arising from membership in a public retirement system. These benefits directly impacted the participants' eventual pension benefit…We determine that the ability to vote in the election of local pension board members and to have that local board control and invest local pension funds is not of the same nature and essentiality as the ability to participate in the fund, accumulate credited time, or receive health care, disability, and life insurance coverage. Voting for the local board is, at best, ancillary to a participant's receipt of the pension payment and other assets." *Id.*, ¶12, 14.

The Second District Appellate Court provided no legal authority to support its assertion that the right to vote for a local board was "at best, ancillary." It provided no logic to support its conclusion. More importantly, it ignored this Court's language in *Williamson*.

In *Williamson*, this Court did not make any limitation to its Opinion that **contractual rights**, not merely monetary benefits, were subject to the protection of the pension protection clause. Rather, this Court expressly stated: "Although the Fund correctly recognizes that **many of our prior decisions involved statutory changes that made immediate and direct diminishments to public pension benefits**, we observe that **that is not the only category of unilateral legislative change prohibited by article XIII, section 5, of the Illinois Constitution**." *Williamson Cty Bd. Of Comm'rs v. Bd. Of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, ¶40 (emphasis added). "In other words, a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to **the benefits of that contractual relationship**." *Williamson Cty Bd. Of Comm'rs v. Bd. Of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, ¶32 (emphasis added). This Court specifically stated: "**The constitutional protection is broad because it protects all of the benefits that flow from the contractual relationship arising from membership in a public retirement system**." *Id.* (emphasis added) (citations omitted).

In this case, the trial court and the Second District Appellate Court erred in finding that the right to vote on a local board (and to have that local board control and invest local pension funds) was not a protected benefit simply because it did not "directly affect the value of a plaintiff's pension benefit."

Notably, this Court has previously rejected this interpretation, stating: "Defendants contend that the reach of article XIII, section 5, is confined to the retirement annuity payments authorized by the Pension Code, **but there is nothing in the text of the Constitution that warrants such a limitation.** Just as the legislature is presumed to act with full knowledge of all prior legislation, the drafters of a constitutional provision are presumed to know about existing laws and constitutional provisions and to have drafted their provision accordingly. **If they had intended to protect only core pension annuity benefits and to exclude the various other benefits state employees were and are entitled to receive as a result of membership in the State's pensions systems, the drafters could have so specified. But they did not.**" *Kanerva v. Weems,* 2014 IL 115811, ¶41 (emphasis added).

This Court has previously explained the need for a broad interpretation as to what constitutes a "benefit," noting: "The text of the provision proposed to and adopted by the voters of this State **did not limit its terms to annuities, or to benefits conferred directly by the Pension Code**, which would also include disability coverage and survivor benefits. **Rather, the drafters chose expansive language that goes beyond annuities and the terms of the Pension Code,**

defining the range of protected benefits broadly to encompass those attendant to membership in the State's retirement systems…We may not rewrite the pension protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve." *Kanerva v. Weems*, 2014 IL 115811, ¶41 (emphasis added); see also *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago*, 2018 IL 122793, ¶25 ("The benefits protected by the pension protection clause **include those benefits attendant to membership in the State's retirement system**, such as subsidized health care, disability and life insurance coverage, and eligibility to receive a retirement annuity and survivor benefits, along with the right to purchase optional service credit in the state pension system for past military service.") (emphasis added).

Indeed, as this Court previously stated: "*Kanerva* held that **the text of the pension clause places no limits on the kind of 'benefit' that is protected by the clause so long as the benefit is part of the contractual relationship "derived from membership" in the retirement system**." *Id.*, ¶29 (emphasis added). In its Opinion, the Second District Appellate Court has now placed a limit on the kind of benefit that is protected by the Pension Protection Clause, and that Opinion should be reviewed by this Court.

Here, it is undisputed that prior to the Act, Plaintiffs had the statutory right and benefit, derived from their membership in the retirement system, to vote and exercise control over their locally-managed boards and pension funds.

It is likewise undisputed that the Act significantly impairs and dilutes Plaintiffs' voting rights and their rights to control the management of those funds. The trial court erred in finding that this right to control, direct, and/or manage funds locally was not one of the "**benefits that flow from the contractual relationship arising from membership in a public retirement system**." *Williamson Cty Bd. Of Comm'rs v. Bd. Of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, ¶32 (emphasis added).

The Second District's Opinion in this case conflicts with this Court's decisions which support a broad protection of all benefits flowing from the contractual relationship attendant to membership in a public retirement system. Accordingly, Plaintiffs respectfully request this Court reverse the Second District's Opinion and instead find that Plaintiff's voting rights are a "benefit" protected by the Pension Protection Clause of the Illinois Constitution and, further, because Public Act 101-610 diminishes, impairs, and/or virtually eliminates that benefit, Public Act 101-610 is unconstitutional.

II. The Second District Erred in Finding that the Public Act Does Not Impair the Funds and Therefore Violates the Pension Protection Clause

The Second District erred in disregarding the fact that the local funds are required to pay for the transition costs (authorized by the Act to be in an amount up to $15,000,0000 plus interest), startup costs, administration costs, and operation costs by simply stating, "The local funds are already required to pay the costs of administration of the local funds, and plaintiffs do not cite any

evidence to show that the costs of administration of the new funds, even including startup costs, would be any greater." *Arlington Heights Police Pension Fund v. Pritzker*, 2023 IL App (2d) 220198, ¶15. As a preliminary matter, the local funds are not required to incur any "transition costs" at present because, prior to Public Act 101-610, there was no transition occurring. Furthermore, prior to Public Act 101-610, the individuals had control over the costs of administering and operating the funds vis-à-vis their ability to vote and elect pension board members.

Prior to the Act, Plaintiffs enjoyed the benefit of having their funds be unencumbered by the liabilities posed by the new Pension Investment Funds. Under the Act, Plaintiffs' funds are subject to be used for the payment of the "costs and expenses incurred in the operation and administration of the [Pension Investment Funds]." 40 ILCS 5/22B-118; 40 ILCS 5/22C-118. Likewise, the Act specifically authorizes the Pension Investment Funds to borrow up to $15,000,000 from the Illinois Finance Authority, plus interest, with Plaintiffs' funds being liable for any and all amounts borrowed. 40 ILCS 5/22B-120(h); 40 ILCS 5/22C-120(h). The liabilities and encumbrances are newly-created and did not exist prior to the Act. Accordingly, Plaintiffs respectfully request this Court reverse the Second District's finding that Public Act 101-610 does not impair Plaintiffs' benefits by placing liabilities and encumbrances upon them that did not exist prior to the Act and further find that, because the Act places new liabilities and encumbrances upon them, that

Public Act 101-610 violates the Pension Protection Clause of the Illinois Constitution.

III. The Second District's Opinion that Pensions are not Property Owned by the Individuals Conflicts with Existing Law – Public Act 101-610 Violates the Takings Clause

The Takings Clause of the Illinois Constitution states: "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law." ILCS Const. Art. 1, §15.

In its written Order, the trial court rejected Plaintiffs' claim that the Act violated the Illinois Constitution's takings clause because "Plaintiffs' Takings Clause claim cannot be tied to real property as required under Illinois' taking clause jurisprudence." (C622). On appeal, Plaintiffs noted that this was an error of law, and that this Court has previously recognized that Takings Clause protections do, in fact, apply to private and personal property, even when not tied to any real property. See *Canel v. Topinka*, 212 Ill.2d 311 (2004). In *Canel*, this Court recognized that dividends on shares of stock were "private property" for purposes of the Takings Clause and therefore the State was required to compensate the plaintiffs for those dividends it received while it had custody of the stock. *Id.*, ¶35 ("Having decided that the dividends were private property, the question remains whether plaintiff and, if a class is certified, other stockholders are entitled to compensation. The takings clause does not

prohibit the taking of private property; rather, it prohibits the taking of private property without just compensation.")

Plaintiffs also argued that because Public Act 101-0610 requires the Plaintiffs to fully transfer all of their private property, comprised of their securities, funds, assets, monies, and cash reserves to the Pension Investment Funds, and because the Act requires Plaintiffs to bear the full financial burden of the costs of transition (up to $15,000,000, plus interest), as well as to "pay the costs and expenses incurred in the operation and administration of the [Pension Investment] Fund[s]," Plaintiffs' private property has been taken and/or damaged in violation of the Takings Clause of the Illinois Constitution.

On appeal, however, the Second District went a step further and specifically found that pension funds are not "private property" and further, that "**Plaintiffs do not own the funds.**" This, however, is contrary to established law and creates a conflict amongst the appellate districts. See, e.g., *In re Marriage of Richardson,* 381 Ill.App.3d 47 (1st Dist. 2008) ("**Pension benefits are property interests**.") (emphasis added); see also *In re Marriage of Papeck,* 95 Ill.App.3d 624 (1st Dist. 1981) ("**Under Illinois law, pension benefits are property interests rather than mere 'expectancies,' regardless of whether they are matured, vested, or non-vested, contributory or non-contributory**. Thus, even if pension benefits are contingent upon future events and may never become payable, they are **not** reduced to mere "expectancies." **The significance of this judicial recognition that pension interests are "property" is this: The**

spouse of the plan participant, upon dissolution of the marriage, obtains an actual co-ownership interest in the benefits as marital property. Thus a divorced wife is not in the position of a mere "creditor," and the anti-attachment provision of the Firemen's Act does not bar her claim to a certain proportion of the benefits.") (emphasis added); see also *In re Marriage of Menken*, 334 Ill.App.3d 531 (2d Dist. 2002) ("It is well settled that pension benefits earned during the marriage are considered marital property and, upon dissolution, are subject to division like any other property.")

Likewise, the legislature has recognized that public pensions are a private property interest subject to division following a dissolution and has enacted statutes providing for the payment of public pensions to individuals other than the original payee to effectuate the same. See *In re Marriage of Menken*, 334 Ill.App.3d 531 (2d Dist. 2002) ("Before July 1, 1999, which was the effective date of section 1–119, no statute in Illinois authorized a domestic relations court to order the payment of a governmental pension benefit to a person other than the regular payee. However, section 1–119 now provides for QILDROs…"); see also 40 ILCS 5/1-119 ("(b)(1) An Illinois court of competent jurisdiction in a proceeding for declaration of invalidity of marriage, legal separation, or dissolution of marriage that provides for support or the distribution of property, or any proceeding to amend or enforce such support or property distribution, may order that all or any part of any (i) member's retirement benefit, (ii) member's refund payable to or on behalf of the member,

or (iii) death benefit, or portion thereof, that would otherwise be payable to the member's death benefit beneficiaries or estate be instead paid by the retirement system to the alternate payee.")

The Second District's decision finding that pension funds are not "property" and are not "owned" by the individuals is problematic for a number of reasons and conflicts with numerous areas of case law. This Court should reverse the Second District's decision and reiterate that pension funds are "owned" by the individuals and are "property," not merely "expectancies." Further, this Court should find that because Public Act 101-610 requires Plaintiffs to transfer all of their securities, funds, assets, monies, and cash reserves and to also bear the full financial burden of the transition costs, as well as the "operation and administration" fees of the new Funds, Public Act 101-610 violates the Takings Clause of the Illinois Constitution.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs-Appellants, ARLINGTON HEIGHTS PPF; AURORA PPF, CHAMPAIGN PPF, CHICAGO HEIGHTS PPF, CHICAGO RIDGE PPF, DeKALB PPF, ELGIN PPF, ELMHURST PPF, EVANSTON PPF, MOKENA PPF, PALOS HEIGHTS PPF, RANTOUL PPF, VILLA PARK PPF, WOOD DALE PPF, WOODRIDGE PPF, MAYWOOD FFPF, PLEASANTVIEW FFPF, THOMAS HENDERSON, SCOTT MAY, LAWRENCE SUTTLE, DANIEL HOFFMAN, GENE KEELER, STEVEN ANKARLO, PATRICK SIMONS, PATRICK KELLY, LEE MORRIS,

DEAN MANN, PAUL MOTT, JIM KAYES, JAMES ROSCHER, THOMAS QUIGLEY, VICTOR VALDEZ, THOMAS TUREK, WILLIAM CZAJKOWSKI, DAVID DELANEY, RICHARD WEIKAL, DAVID FLOWERS, SR., ROBERT MILLER, DAN RANKOVICH, AARON WERNICK, TIMOTHY SCHOOLMASTER DAVE LOEHAM, MIKE HERBERT, MATTHEW BROSS, MICHAEL TITTLE, SCOTT SHROEDER, BENJAMIN DEFILIPPIS, JORDAN ANDERSON, DENNIS KOLETSOS, WILLIAM BODNER, and FRED MALAYTER, respectfully request that this Honorable Court REVERSE the Second District Appellate Court's February 7, 2023 Opinion, and award Plaintiffs all such other relief as this Court deems just and fair.

Daniel F. Konicek #6205408
Amanda J. Hamilton #6306098
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655
dan@konicekdillonlaw.com
amanda@konicekdillonlaw.com

Respectfully submitted,

/s/ Amanda J. Hamilton
Attorneys for Plaintiffs-Appellants

No. 129471

IN THE SUPREME COURT OF ILLINOIS

ARLINGTON HEIGHTS POLICE; PENSION FUND, et al.,	) On Petition for Leave to Appeal) from the Appellate Court of Illinois) Second District, No. 2-22-0198
Plaintiffs-Petitioners,	) There Heard on Appeal from the
v.	) Circuit Court of Kane County,) Illinois, Case No. 2021 CH 55
JAY ROBERT "J.B." PRITZKER, et al.	) Honorable Robert K. Villa) Judge Presiding
Defendants-Respondents.	)

CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341(a), (b) and 367. The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a), is twenty-eight (28) pages.

/s/ Amanda J. Hamilton

Amanda J. Hamilton (#6306098)
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
P: 630.262.9655

No. 129471

IN THE SUPREME COURT OF ILLINOIS

ARLINGTON HEIGHTS POLICE; PENSION FUND, et al.,	) On Petition for Leave to Appeal) from the Appellate Court of Illinois) Second District, No. 2-22-0198
Plaintiffs-Appellants,	) There Heard on Appeal from the
v.	) Circuit Court of Kane County,) Illinois, Case No. 2021 CH 55
JAY ROBERT "J.B." PRITZKER, et al.	) Honorable Robert K. Villa) Judge Presiding
Defendants-Appellees.	)

NOTICE OF FILING

TO: See attached Service List.

PLEASE TAKE NOTICE that on **June 27, 2023,** we electronically filed with the Illinois Supreme Court Clerk, the **BRIEF OF PLAINTIFFS-APPELLANTS** on behalf of Plaintiffs-Appellants, and hereby served the attorneys of record with one copy of the same.

Daniel F. Konicek, #6205408
Amanda J. Hamilton, #6306098
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134/630.262.9655
dan@konicekdillonlaw.com
amanda@konicekdillonlaw.com

/s/ Amanda J. Hamilton
Attorneys for Plaintiffs-Appellants

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

CERTIFICATE OF SERVICE

I, the undersigned attorney for Plaintiffs-Appellants, after being first duly sworn on oath, depose and certify that a copy of the foregoing **Notice** and **Brief** were served on the attorneys of record **via Microsoft Outlook e-mail transmission as set forth on the attached Service List,** on **June 27, 2023**.

/s/ Amanda J. Hamilton

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

No. 129471

IN THE SUPREME COURT OF ILLINOIS

ARLINGTON HEIGHTS POLICE; PENSION FUND, et al.,	) On Petition for Leave to Appeal) from the Appellate Court of Illinois) Second District, No. 2-22-0198
Plaintiffs-Appellants,	) There Heard on Appeal from the
v.	) Circuit Court of Kane County,
	) Illinois, Case No. 2021 CH 55
JAY ROBERT "J.B." PRITZKER, et al.	) Honorable Robert K. Villa) Judge Presiding
Defendants-Appellees.	)

SERVICE LIST

Richard S. Huszagh Richard.huszagh@ilag.gov
Assistant Attorney General
Office of the Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-2587/3672
CivilAppeals@ilag.gov
Attorneys for Pritzker, IDOI and Severinghaus

Richard F. Friedman rfriedman@nealandleroy.com
Langdon D. Neal lneal@nealandleroy.com
NEAL & LEROY, LLC
20 S. Clark Street, Suite 2050
Chicago, Illinois 60603
(312) 641-7144
Attorneys for Meister

Elizabeth Weber eweber@il-fa.com
Illinois Finance Authority
160 N. LaSalle Street, Suite S-1000
Chicago, Illinois 60601
Additional Attorney for Meister

Michael A. Scodro mscodro@mayerbrown.com
Brett E. Legner, blegner@mayerbrown.com
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 701-8886
Attorney for Bd. of Trustees of Illinois Firefighters Pension Inv. Fund

Joseph M. Burns jburns@jbosh.com
Taylor E. Muzzy tmuzzy@jbosh.com
David Huffman-Gottschling davidhg@jbosh.com
Jacobs, Burns, Orlove & Hernandez
One North LaSalle Street, Suite 1620
Chicago, IL 60601
(312) 327-3443
Attorneys for Bd. Of Trustees of Illinois Police Officers Pension Inv. Fund

Paul Denham
Jill D. Leka
Clark Baird Smith LLP
6133 North River Road, Suite 1120
Rosemont, IL 60018
jleka@cbslawyers.com
pdenham@cbslawyers.com
Attorneys for Illinois Municipal League

Joseph Weishampel, jw@ulaw.com
Jerry Marzullo, jjm@ulaw.com
Asher, Gittler & D'Alba, Ltd.
200 West Jackson Boulevard, Suite 720
Chicago, IL 60606
Attorneys for Amicus Curiae – Associated Firefighters of Illinois

TABLE OF CONTENTS TO APPENDIX

2023 IL App (2d) 220198
No. 2-22-0198
Opinion filed February 7, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE ARLINGTON HEIGHTS POLICE PENSION FUND, THE AURORA POLICE PENSION FUND, THE CHAMPAIGN POLICE PENSION FUND, THE CHICAGO HEIGHTS POLICE PENSION FUND, THE CHICAGO RIDGE POLICE PENSION FUND, THE CICERO POLICE PENSION FUND, THE De KALB POLICE PENSION FUND, THE ELGIN POLICE PENSION FUND, THE ELMHURST POLICE PENSION FUND, THE EVANSTON POLICE PENSION FUND, THE MOKENA POLICE PENSION FUND, THE PALOS HEIGHTS POLICE PENSION FUND, THE RANTOUL POLICE PENSION FUND, THE VILLA PARK POLICE PENSION FUND, THE WOOD DALE POLICE PENSION FUND, THE WOODRIDGE POLICE PENSION FUND, THE MAYWOOD FIREFIGHTERS'PENSION FUND, THE PLEASANTVIEW FIREFIGHTERS' PENSION FUND, THOMAS HENDERSON,SCOTT MAY, LAWRENCE SUTTLE, DANIEL HOFFMAN, PATRICK SIMONS, PATRICK KELLY, GENE KEELER, STEVEN ANKARLO, LEE MORRIS, DEAN MANN,PAUL MOTT, JIM KAYES, JAMES ROSCHER, THOMAS QUIGLEY, VICTOR VALDEZ, THOMAS TUREK, WILLIAM CZAJKOWSKI, DAVID DELANEY, RICHARD WEIKAL, DAVID FLOWERS SR., ROBERT MILLER, DAN RANKOVICH, AARON WERNICK, TIMOTHY SCHOOLMASTER, DAVE LOEHMAN, MIKE HERBERT, MATTHEW	) Appeal from the Circuit Court) of Kane County.

2023 IL App (2d) 220198

BROSS, MICHAEL TITTLE, SCOTT SHROEDER, BENJAMIN DEFILIPPIS, JORDAN ANDERSON, DENNIS KOLETSOS, WILLIAM BODNAR, and FRED MALAYTER,	)	
Plaintiffs-Appellants,	)	
v.	)	No. 21-CH-55
JAY ROBERT "J.B." PRITZKER, in His Official Capacity as Governor of the State of Illinois; CHRISTOPHER B. MEISTER, in His Official Capacity as Executive Director of the Illinois Finance Authority; DANA POPISH SEVERINGHAUS, in Her Official Capacity as Acting Director of Insurance; THE BOARD OF TRUSTEES FOR THE POLICE OFFICERS' PENSION INVESTMENT FUND; and THE BOARD OF TRUSTEES FOR THE FIREFIGHTERS' PENSION INVESTMENT FUND,	)	Honorable Robert K. Villa,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE McLAREN delivered the judgment of the court, with opinion. Justices Hutchinson and Jorgensen concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiffs who are individual active- and retired-beneficiary representatives from multiple suburban and downstate police and firefighter pension funds appeal from the trial court's order granting summary judgment in favor of defendants. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In 2019, defendant Governor Jay Robert "J.B." Pritzker signed into law Public Act 101-610 (eff. Jan. 1, 2020) (Act) that, *inter alia*, amended portions of the Illinois Pension Code (40 ILCS 5/1-101 *et seq.* (West 2018)). Prior to the Act, there were approximately 650 local police and firefighter pension funds for municipalities with populations between 5000 and 500,000.

These funds were governed by five-member boards comprised of two appointed members, two members elected by active members, and one member elected by other beneficiaries (*i.e.*, retirees). *Id.* §§ 3-128, 4-121. Each board was responsible for determining the retirement, disability, and death benefits payable to fund members and other beneficiaries. *Id.* §§3-148, 4-139. Member and employer contribution requirements were set in the Pension Code. See *id.* §§ 3-125, 3-125.1, 4-118, 4-118.1. Employers were required to make contributions that, added to the employee contributions, were sufficient to cover the fund's "normal cost" (the amount necessary to pay the additional benefits earned by current services) and to fund 90% of its actuarial liabilities by 2040, paying down unfunded liabilities by a specified amount each year. *Id.* §§ 3-125, 4-118.

¶ 4 Among other things, the Act consolidated all existing relevant police and firefighter pension fund assets into two statewide police and firefighter pension investment funds, one for police and one for firefighters. The local funds were to transfer custody of and investment responsibility for their assets to the appropriate investment fund, which was to invest and administer the pooled assets of the funds collectively. However, each local fund retained a separate "account" such that the "operations and financial condition of each participating pension fund account shall not affect the account balance of any other participating pension fund." 40 ILCS 5/22B-118(c), 22C-118(c) (West 2020). The returns on the investments were to be "allocated and distributed pro rata among each participating pension fund account in accordance with the value of the pension fund assets attributable to each fund." *Id.* The statewide investment fund boards were to be comprised of nine members: three officers or executives from participating municipalities, three active participants of the local funds (who were elected by active participants), two beneficiaries from the local funds (elected by beneficiaries), and one member recommended by the Illinois Municipal League (appointed by the governor and confirmed by the

Senate). *Id.* §§ 22B-115(b)(1)-(4), 22C-115(b)(1)-(4). The Act provided that the local funds retained "exclusive authority to adjudicate and award" retirement and other benefits, and the investment funds "shall not have the authority to control, alter, or modify, or the ability to review or intervene in, the proceedings or decisions" of the local funds. *Id.* §§ 3-124.3, 4-117.2. In addition, the Act authorized the Illinois Finance Authority to lend up to $7.5 million to each investment fund that, if borrowed, would be repaid with interest. *Id.* §§ 22B-120(h), 22C-120(h).

¶ 5 Plaintiffs filed a three-count complaint seeking declaratory, injunctive, and other relief and a finding that the Act violated article XIII, section 5, of the Illinois Constitution (Ill. Const. 1970, art. XIII, § 5), commonly known as the pension protection clause (count I), and/or article I, section 16 of the Illinois Constitution (Ill. Const. 1970, art. I, § 16), commonly known as the contracts clause (count II), and/or article I, section 15 of the Illinois Constitution (Ill. Const. 1970, art. I, § 15), commonly known as the takings clause (count III). The trial court granted certain of defendants' motions to dismiss; all of the named funds were dismissed as plaintiffs for lack of standing, and count II was dismissed against the remaining plaintiffs for failing to state a cause of action under the contracts clause. These rulings are not challenged on appeal. The trial court later entered summary judgment on counts I and III in favor of defendants. It is from this grant of summary judgment that this appeal arises.

¶ 6 II. ANALYSIS

¶ 7 Plaintiffs contend that the trial court erred in granting summary judgment in favor of defendants. Summary judgment is appropriate only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2020). A triable issue that will preclude the entry of summary judgment exists

where the material facts are disputed or where reasonable persons might draw different inferences from undisputed facts. *G.I.S. Venture v. Novak*, 2014 IL App (2d) 130244, ¶ 8. In determining whether a genuine issue of material fact exists, we must construe the materials of record strictly against the movant and liberally in favor of the nonmoving party. *Harlin v. Sears Roebuck & Co.*, 369 Ill. App. 3d 27, 31 (2006). While the use of summary judgment is to be encouraged as an aid in the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. *G.I.S. Venture*, 2014 IL App (2d) 130244, ¶ 8. A grant of summary judgment is reviewed *de novo*. *Harlin*, 369 Ill. App. 3d at 31.

¶ 8 Plaintiffs first argue that the trial court erred in granting summary judgment on count I, where the court found that the Act did not violate the pension protection clause, which states: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. Our supreme court has held that "the clause means precisely what it says: 'if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the State's pension or retirement systems, it cannot be diminished or impaired.' " *In re Pension Reform Litigation*, 2015 IL 118585, ¶ 45 (quoting *Kanerva v. Weems*, 2014 IL 115811, ¶ 38). Once someone 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. The protection of the pension protection clause "is broad because it 'protects *all of the benefits* that flow from the contractual relationship arising from membership in a public retirement system.' " (Emphasis added.)

Williamson County Board of Commissioners v. Board of Trustees of the Illinois Municipal Retirement Fund, 2020 IL 125330, ¶ 32 (quoting *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 54).

¶ 9 Plaintiffs first assert that the Act violates the pension protection clause because it impairs the members' rights to vote in the election of local pension board members "and to have that local board control and invest local pension funds." According to plaintiffs, voting rights are a benefit that flows from the contractual relationship and, therefore, cannot be changed.

¶ 10 Plaintiffs are correct that the clause's protections extend beyond the pension payment itself. For example, in *Williamson County*, the plaintiffs, all elected members of the Williamson County Board of Commissioners, had satisfied the requirements of the Pension Code to participate in the Illinois Municipal Retirement Fund (IMRF). The legislature subsequently amended the Pension Code to add a requirement that altered the IMRF eligibility for elected county board members, requiring county board adoption of an IMRF participation resolution within 90 days of each election when a member of the county board is elected or reelected. *Williamson County*, 2020 IL 125330, ¶ 9. The plaintiffs' participation in IMRF was terminated when Williamson County failed to adopt such a resolution in a timely manner.

¶ 11 In finding the amendment to the Pension Code unconstitutional, our supreme court noted that "immediate and direct diminishments to public pension benefits *** is not the only category of unilateral legislative change prohibited by article XIII, section 5, of the Illinois Constitution." *Id.* ¶ 40. To "illustrate this distinct protection of article XIII, section 5, of the Illinois Constitution that prohibits the legislature from unilaterally imposing new limitations or requirements on public pension benefits that did not exist when the public employee was hired" (*id.* ¶ 42), the court reviewed two cases in which the court had previously found improper new requirements placed on

pension benefits: (1) *Buddell v. Board of Trustees*, 118 Ill. 2d 99 (1987) (involving changes to employees' right to purchase service credit for time spent in military service, without limitations), and (2) *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund*, 2018 IL 122793 (involving amendments to the Pension Code that eliminated the ability of the plaintiffs to purchase service credit during a leave of absence to work for a local union). Noting that "the calculation of retirement annuity benefit is based on a formula that considers the number of service credits of the employee and the employee's final earnings on the date of retirement," the court concluded that the termination of the plaintiffs' continued participation in IMRF, predicated on the new statutory requirements, "decreased their service credits and negatively impacted their annuity benefit calculation." *Williamson County*, 2020 IL 125330, ¶ 48. Thus, the amendment constituted a new requirement for the plaintiffs' continued IMRF participation and it "diminished or impaired their protected public pension benefits." *Id.* ¶ 50.

¶ 12 The benefits at issue in *Williamson County*, *Buddell*, and *Carmichael* were benefits that affected the participants' ability to continue participation (*Williamson County*) or their ability to increase their service credits (*Buddell* and *Carmichael*), thereby negatively affecting the calculation of their eventual benefit payments. These are the types of benefits "that flow from the contractual relationship arising from membership in a public retirement system." (Internal quotation marks omitted.) *Id.* ¶ 32. These benefits directly impacted the participants' eventual pension benefit.

¶ 13 As our supreme court has said:

> "The benefits protected by the pension protection clause include those benefits attendant to membership in the State's retirement system, such as subsidized health care, disability and life insurance coverage, and eligibility to receive a retirement annuity and survivor

benefits (see *Jones v. Municipal Employees' Annuity & Benefit Fund*, 2016 IL 119618, ¶ 36; *Kanerva*, 2014 IL 115811, ¶¶ 39, 41), along with the right to purchase optional service credit in the state pension system for past military service (see *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 105-06 (1987))." *Carmichael*, 2018 IL 122793, ¶ 25.

¶ 14 We determine that the ability to vote in the election of local pension board members and to have that local board control and invest local pension funds is not of the same nature and essentiality as the ability to participate in the fund, accumulate credited time, or receive health care, disability, and life insurance coverage. Voting for the local board is, at best, ancillary to a participant's receipt of the pension payment and other assets. The local boards were entrusted with investing the contributions so that payments could be made to participants. However, choosing who invests funds does not guarantee a particular outcome for benefit payments. The local boards also did not have any say in the actual method of funding; contribution requirements were set in the Pension Code. See 40 ILCS 5/3-125, 3-125.1, 4-118, 4-118.1 (West 2018). Our supreme court has held that the pension protection clause does not control the manner in which state and local governments fund their pension obligations. See *Jones v. Municipal Employees' Annuity and Benefit Fund of Chicago*, 2016 IL 119618, ¶ 38. Voting for the board members who deal with the funding of the pension fund is no more than a procedure that may have some impact on the funding; it is not a direct impact on the payment of benefits. Where the methods of funding a retirement system are not governed by the pension protection clause, we cannot say that the right to choose who invests the funds of the system is more of a protected benefit. Thus, we conclude that the trial court did not err in granting summary judgment on this basis.

¶ 15 Plaintiffs next argue that the trial court failed to consider their argument that the Act diminishes and impairs their pension benefits because it "requires the local funds to pay for the

newly-created and consolidated funds' startup costs, administration, and operation, as well as transition costs of up to $15,000,000 plus interest." Plaintiffs make no argument as to how the requirement to pay for the administration of the funds would in any way impair or diminish the payment of their pension benefits. The local funds are already required to pay the costs of administration of the local funds, and plaintiffs do not cite any evidence to show that the costs of administration of the new funds, even including startup costs, would be any greater. The quotation referencing $15 million plus interest is misleading, at best. Section 22B-120(h) of the Act does not require the borrowing, let alone spending, of $15 million for such expenses. It merely authorizes the Illinois Finance Authority to lend up to $7.5 million to each investment fund that, *if borrowed*, would be repaid with interest. See 40 ILCS 5/22B-120(h), 22C-120(h) (West 2020). We further note that the level of benefit payments is not determined by the level of funding in the fund. Member and employer contribution requirements are set in the Pension Code; if more money were to be required to pay the already-established benefits, future contribution requirements could be amended. Plaintiffs present no evidence that the Act actually reduced the funding available for the payment of benefits.

¶ 16 We find no error in the trial court's grant of summary judgment in defendants' favor as to count I and grant plaintiffs no relief.

¶ 17 Plaintiffs next contend that the Act violates the takings clause of the Illinois Constitution. Article I, section 15 of the Illinois Constitution states: "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law." Ill. Const. 1970, art. I, § 15.

¶ 18 Plaintiffs spend a great deal of their argument attacking the trial court's conclusion, based on the case of *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62 (2008), that a takings

clause claim must be tied to real property. However, we are not bound by the reasoning of the trial court and may affirm on any basis presented in the record. See *People ex rel. Alvarez v. $59,914 United States Currency*, 2022 IL 126927, ¶ 24. We need not address the issue of real property, as plaintiffs failed to establish the existence of an elemental requirement—that of "private property." As we stated in our pension protection clause analysis (*supra* ¶ 14), while plaintiffs have a constitutional right to receive pension benefits, they do not have a property right in any particular assets or level of funding. Plaintiffs are individual active and retiree/beneficiaries of the local funds: they have no right to the investments held by the funds; rather, they are entitled only to present or future payments from the funds. No plaintiff has any right to direct the investment of the monies held by the funds or direct that they receive any different course of payments (either in amount or frequency) beyond that established by statute and the funds. Simply put, plaintiffs do not own the funds that the Act requires to be transferred to the new statewide police and firefighter pension investment funds. The Act does nothing more than require one type of government-created pension fund to transfer assets to another type of government-created pension fund. Plaintiffs' rights to receive benefit payments are not impacted by these transfers. As the "property" at issue here is not the private property of the plaintiffs, the takings clause is neither relevant nor applicable here. Thus, we find no error in the trial court's grant of summary judgment on count III.

¶ 19 III. CONCLUSION

¶ 20 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.

Arlington Heights Police Pension Fund v. Pritzker, 2023 IL App (2d) 220198

Decision Under Review:	Appeal from the Circuit Court of Kane County, No. 21-CH-55; the Hon. Robert K. Villa, Judge, presiding.
Attorneys for Appellant:	Daniel F. Konicek, and Amanda J. Hamilton, of Konicek & Dillon, P.C., of Geneva, for appellants.
Attorneys for Appellee:	Kwame Raoul, Attorney General (Jane Elinor Notz, Solicitor General, and Richard S. Huszagh, Assistant Attorney General, of counsel), Richard F. Friedman and Langdon D. Neal, of Neal & Leroy, LLC, Michael A. Scodro and Brett E. Legner, of Mayer Brown LLP, and Joseph M. Burns, Taylor E. Muzzy, and David Huffman-Gottschling, of Jacobs, Burns, Orlove, and Hernandez LLP, all of Chicago, for appellees. Paul Denham and Jill D. Leka, of Clark Baird Smith LLP, of Rosemont, for *amicus curiae* Illinois Municipal League. Joseph Weishampel, Margaret Angelucci, and Jerry Marzullo, of Asher, Gittler & D'Alba, Ltd., of Chicago, for *amicus curiae* Associated Firefighters of Illinois.

IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
SIXTEENTH JUDICAL CIRCUIT

Arlington Heights Police Pension Fund, *et.al.*,	)	
	)	Case. No. 21 CH 55
Plaintiffs,	)	
v.	)	
	)	Hon. Robert K. Villa
	)	Judge Presiding
Governor JB Pritzker, *et.al.*,	)	
Defendant	)	

SUMMARY JUDGMENT ORDER

After a lengthy hearing on the parties' respective cross motions for summary judgment, the Court took this matter under advisement. It is worth noting that where cross-motions for summary judgment are filed, the parties agree that only a question of law is involved and invite the court to decide the issues based on the claims presented and supported by the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. That does not mean that an issue of material fact cannot be found, nor does it obligate a court to render summary judgment. *Id.*

Having reviewed the parties' well-supported briefs, orally presented arguments and conducted a thorough review of the relevant case law on the issues presented, the Court finds this case appropriate for summary judgment.

Issues Addressed

Plaintiffs initiated this action seeking, *inter alia*[1], a declaration that Public Act 101-0610 ("the Act") is unconstitutional as a matter of law because the Act violates protections afforded Plaintiffs under the Pension Protection Clause (Ill. Const. art I, § 5) and Takings Clause (Ill. Const. art I, § 15) of the Illinois Constitution. Because the parties' briefs present a well-developed history of the Act and its impact on the former Articles 3 and 4 of the Illinois Pension Code, 40 ILCS 5/1-101*et seq.* (the "Prior Code"), such facts will not be restated here.

Generally, however, effective January 1, 2020 the Act reduced Illinois' approximately 650 locally controlled police and firefighter pension funds ("the Local Funds") down to two statewide funds – one for police pensions and one for firefighter pensions (the "New Funds"). Defendants contend at length that such a drastic change in how Illinois' police and firefighter pensions are managed (and invested) will bring much needed financial improvements beneficial to both the taxed public and fund beneficiaries. Plaintiffs reject this conclusion. Because Plaintiffs' claims are not due process claims where a rational basis or strict scrutiny analysis would apply, the General Assembly's purported reasoning is of no moment here.

Plaintiffs' claims focus instead on the Act's obvious change as to how pension fund members choose who will sit on their pension fund boards and

[1] See Order dated 9/17/21 dismissing the Plaintiff Funds as improper plaintiffs and addressing Defendants initial motions to dismiss. As such, the "Plaintiffs" and "Claims" herein refer only to the individual plaintiffs and their respective individual claims.

how the New Funds are initially funded. Previously, a five-member board governed the Local Funds, with two members elected by active members and one elected by beneficiaries (collectively herein "the members"). *40 ILCS 5/3-128; 5/4-121.* Each New Fund board has nine members elected statewide. The members are elected as follows: 1) three members are elected from among the officers or executives of the Local Funds' municipalities; 2) three members are elected from among the currently active participants in the local funds; 3) two members are elected from among the beneficiaries of the local funds elected by those beneficiaries; and 4) one member is recommended by the Illinois Municipal League and appointed by the Governor, subject to Senate confirmation. *40 ILCS 5/22B-115, 40 ILCS 5/22C-115.*

Plaintiffs allege that the Act violates the Pension Clause by severely diminishing and impairing their rights to vote for locally controlled pension fund board members. More specifically, that the change from voting locally and with a limited number of co-members to voting from among all active or beneficiary members statewide "substantially and unconstitutionally dilut[es] the voting power of each Individual." Plaintiffs contend that because their voting rights are derived from their status as active or beneficiary members those voting rights are among the "benefits" protected by the Pension Clause.

Plaintiffs separately claim the Act violates the Takings Clause (Ill. Const. 1970 art.1 §15) by taking or damaging Plaintiffs private property (money

presently in the Local Funds) for public use (to pay for the New Funds' startup and administrative costs and secure a possible $15M loan).

Analysis

1. The Act Significantly Impacts Plaintiffs' Voting Rights.

It is undisputed that prior to the Act, there were approximately 650 local police and firefighter pension funds in Illinois and that each fund was governed by a five-member board of directors; three of whom were elected by that funds active and retired members. It is also undisputed that the Act eliminated all of the Local Funds boards in favor of two statewide boards governing the New Funds. Plaintiffs' Amended Complaint illustrates the resulting impact the Act has on an individual member's voting right as follows:

> a. Plaintiff WILLIAM CZAJKOWSKI is an active participant in the PALOSHEIGHT POLICE PENSION FUND;
>
> Prior to the January 1, 2020 effective date of Public Act 101-0610, he had the benefit of a 3.5% vote (1 out of 28) for the two active- participant-selected members of the five-person board of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 1.43% say regarding that board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/13,804 vote (1 out of 13,804) for the three active-participant- selected members of the nine-person Permanent Board, and thus, effectively just a 0.0025% say regarding the Permanent Board's selection of an investment manager or advisor.

b. Plaintiff DAVID DELANEY is a retired-beneficiary participant in thePALOS HEIGHT POLICE PENSION FUND;

> Prior to the January 1, 2020 effective date of Public Act 101-0610, hehad the benefit of a 4.5% vote (1 out of 22) for the one beneficiary- selected member of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 0.91% say regarding the Board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/11,432 vote (1 out of 11,432) for the two beneficiary-selected members of the nine-person Permanent Board, and thus, effectively just a 0.0019% say regarding the Permanent Board's selection of an investment manager or advisor.

(Compl, ¶58)

While they concede having no control of what the elected board members invest in, etc., Plaintiffs maintain their protected benefit lay in "voting the bums out" at the end of their term and electing new board members Plaintiffs believe might better manage their fund. As illustrated above, the Act undeniably diminished the weight of each individual's board member vote. Not only numerically, but in the practical reality that engaging with member voters as 1 of 28 (Plaintiff CZAJKOWSKI) or 1 of 22 (Plaintiff DELANY) provides a more meaningful opportunity to influence which board members are voted for than being 1 out of 13,804 (Plaintiff CZAJKOWSKI) and 1 out of 11,432 (Plaintiff DELANY) members scattered across the State. Whether this violates Plaintiffs' constitutionally protected rights is not claimed under traditional voting rights protections.

2. Traditional Voting Rights Claims are Not at Issue.

Our supreme court has long held "that legislation affecting any stage of the election process implicates the right to vote." See *Graves v. Cook Cty. Republican Party*, 2020 IL App (1st) 181516, ¶ 54, 445 Ill. Dec. 126, 136, 166 N.E.3d 155, 165 (referencing a history of related voting cases). In the case at bar, one of those cases, *Tully v. Edgar*, 171 Ill. 2d 297, 215 Ill. Dec. 646, 664 N.E.2d 43 (1996), was discussed at some length during oral argument and must be addressed here.

In *Tully*, a public act amended the process of selecting the University of Illinois' Board of Trustees from a public election to an appointive system. Then-serving board members were summarily dismissed before their six-year terms had expired and their replacements were thereafter appointed and installed. Although the *Tully* plaintiffs acknowledged the General Assembly had the power to change their offices from an elective to an appointed position, they claimed that, without a cause finding, removal from their positions mid-term violated several provisions of both the United States and Illinois Constitutions. *Id.* at 303-304. *Tully* concluded the General Assembly had acted unconstitutionally because it nullified the voters' choice by eliminating, midterm, the right of the elected officials to serve out the balance of their terms. *Tully*, 171 Ill. 2d at 312. Of note, is that the *Tully* court observed that the legislature could have achieved its goal of switching to an appointed member board without encroaching on the

right to vote if it had allowed the elected trustees to finish their terms and then be succeeded by appointed trustees. *Id.* at 312.

A year after *Tully* was decided, the Illinois Supreme Court issued its opinion in *E. St. Louis Fed'n. of Teachers, Local 1220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 414, 227 Ill. Dec. 568, 577, 687 N.E.2d 1050, 1059 (1997)[2]. In that case, the Circuit Court of St. Clair County, had determined an emergency financial assistance statute was unconstitutional because the statute provided for the removal of an elected superintendent of a school district and several school board members. On direct appeal, our supreme court reversed the trial court after finding the statute constitutional on its face. The Supreme Court ultimately determined, however, that the statue violated the removed officials' procedural due process rights by not affording them notice and an opportunity to be heard before removal pursuant to the statute. *E. St. Louis Fed'n.of Teachers, Local 1220,* 178 Ill. 2d at 422.

The main distinction between the case at bar and the aforementioned cases is that those cases involved traditional "voters rights" claims such as procedural due process, equal protection, constitutional vagueness, improper delegation of legislative authority, and other guarantees found in the United States and Illinois Constitutions (*e.g.*, U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2, art. III, § 1). After an objective review of Plaintiffs' Amended

[2] Plaintiffs cited to *E. St. Louis Fed'n.of Teachers, Local 1220* in its Combined Response to the Defendants' Motion to Dismiss and Counter Motion for Summary Judgment to support the Plaintiff Funds argument they had standing to bring a Takings Clause claim.

Complaint, the Court finds that these types of claims are not at issue here. Rather, Plaintiffs' claims are limited to whether the Act violates the Pension Clause or Takings Clause. It is axiomatic that a court's determination at summary judgment must be limited to the record before it. Therefore, the Court cannot determine this case against traditional voting rights considerations.

3. Voting is Not Presently a "Benefit" under the Pension Clause.

The Parties' briefing provides a comprehensive history of Illinois Supreme Court cases involving challenges to legislation brought under the Pension Clause. This Court's review of each cited authority (as well as a further Shepard's® review of same for additional authority) confirms what we all know – Illinois' reviewing courts have yet to hold that the right to vote for pension fund board members falls within the protections of the Pension Clause. Nevertheless, the parties' briefs and oral arguments are properly focused on whether the scope of the Pension Clause's term "benefits" is restricted to monies due pension members upon retirement. After lengthy consideration of the developed case law, the clear answer is – sort of, but mostly yes.

Less than a year before Plaintiffs initiated this case, the Illinois Supreme Court issued its opinion in *Williamson Cty. Bd. of Comm'rs v. Bd. of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, 449 Ill. Dec. 248, 178 N.E.3d 1099. The quoted passage below (with internal citations intact) provides the framework for deciding this case.

This court's jurisprudence on the Illinois Constitution's pension protection clause is well developed. Found in article XIII, section 5, of the Illinois Constitution, the clause provides that

> *"[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5.*

Our decisions have uniformly construed its plain meaning to protect ***any benefit*** *of the enforceable contractual relationship arising from membership in one of the pension or retirement systems of the State and any local unit of government or school district from diminishment or impairment. Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund, 2018 IL 122793, ¶ 25, 429 Ill. Dec. 677, 125 N.E.3d 383; In re Pension Reform Litigation, 2015 IL 118585, ¶ 45, 392 Ill. Dec. 1, 32 N.E.3d 1 (Heaton); Kanerva v. Weems, 2014 IL 115811, ¶ 38, 383 Ill. Dec. 107, 13 N.E.3d 1228.*

In other words, "a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to ***the benefits*** *of that contractual relationship." Jones v. Municipal Employees' Annuity & Benefit Fund, 2016 IL 119618, ¶ 29, 401 Ill. Dec. 454, 50 N.E.3d 596.* ***The constitutional protection is broad because it "protects all of the benefits that flow from the contractual relationship arising from membership in a public retirement system****." Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶ 54, 402 Ill. Dec. 1, 51 N.E.3d 753 (citing Kanerva, 2014 IL 115811, ¶ 38). That protection "attach [es] once an individual first embarks upon employment in a position covered by a public retirement system, not when the employee ultimately retires." Heaton, 2015 IL 118585, ¶ 46. Effectively, the clause prohibits unilateral legislative action that diminishes or impairs the constitutionally protected benefit. Matthews, 2016 IL 117638, ¶ 54 (citing Kanerva, 2014 IL 115811, ¶ 40).*

Williamson Cty. Bd. of Comm'rs, 2020 IL 125330, ¶¶ 31-32 (emphasis added) (also citing, *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 514 N.E.2d 184, 112 Ill. Dec. 718 (1987) (denial of the option to purchase military service credit from the State University Retirement System held unconstitutional under the Pension Clause).

The language emphasized (by this Court) in the above quote appears to suggest that the "benefits" protected under the Pension Clause must be broader than the simple payment a member is to receive upon retirement. Firstly, the term "benefits" is plural; which, on its face, cannot be read to mean a singular (undefined) something. The *Williamson* opinion seemingly makes that more clear by referring to a "broad" protection of "all the benefits that flow from the contractual relationship arising from membership in a public retirement system." *Id.* A careful review, however, of each case cited with approval in *Williamson* suggests the Illinois Supreme Court does not mean what this language suggests.

That is because all of the cases using the "broad protection" and "all benefits" language when holding that an act of the General Assembly violated the Pension Clause (*Carmichael, In re Pension Reform Litigation (Heaton), Kanerva, Buddell, Jones*) involve Plaintiffs who were denied a "benefit" that could be directly tied to a change in the value of their future retirement payments. These included, for example, removal from membership in IMRF (*Williamson*), changing health insurance premium subsidies for retirees (*Kanerva),* changing the time-period to purchase military service credit from the State University Retirement System (*Buddell),* and the right to earn service credit on a leave of absence to work for a local labor organization (*Carmichael).*

Thus, the seemingly expanding language suggesting there is more than one benefit ("benefits") and that "all rights" should be "broadly" protected has, in

practice, not been applied as Plaintiff argue it should. Instead, it has been applied only to public acts that directly affect the value of a plaintiff's pension benefit. "The common-law doctrine that holds that courts should not compromise the stability of the legal system by declaring legislation unconstitutional when it is not required is "[o]ne of the most firmly established'" in constitutional law (citations omitted). . . and one that [the Illinois Supreme Court] has applied with diligence." *People v. Brown*, 2020 IL 124100, ¶ 27, 444 Ill. Dec. 612, 619, 164 N.E.3d 1187, 1194. In this case, the Court finds that it cannot extend the term "benefits" beyond the reach of prior Illinois Supreme Court cases (that this Court is aware of) to find the challenged legislation unconstitutional against the Pension Clause's protections.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count I. Plaintiffs' cross-motion for summary judgment is denied.

4. The Takings Clause is Not Implicated.

Plaintiffs remaining claim (Count III) alleges the Act violates the Illinois Constitution's takings clause, which provides that "private property shall not be taken or damaged for public use without just compensation as provided by law." *Ill. Const. 1970, art. I, § 15.* Specifically, Plaintiffs allege that the Act "diminishes and impairs the pension benefits to which each [Plaintiff] is entitled, including but not limited to ultimately bear all costs of transition up to $15,000,000, plus interest." (Amend Compl. ¶87). As an initial matter, it is unquestionable that monies within the Local Funds pay for the New Funds' startup costs for administration and operation. Under Count III that fact only presents injury to Plaintiffs if such monies are "property" within in the meaning of Illinois' takings clause.[3] Our supreme court provides a comprehensive analysis of takings clause jurisprudence in *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008). Although not a recent opinion, it remains good case law on the subject.

Empress Casino involved a challenge to the 2006 passing of Public Act 94-804, which imposed, for a two-year period, a 3% surcharge on four riverboat casinos in Illinois that had adjusted gross receipts (AGR) of over $ 200 million in 2004. Five other Illinois riverboat casinos that had AGRs below $ 200 million were not subject to the surcharge. *Empress Casino Joliet Corp.*, 231 Ill. 2d. at

[3] Although Plaintiffs refer only to Illinois' takings clause, because the federal takings clause is so similar ("nor shall private property be taken for public use, without just compensation.") (U.S. Const., amend. V) and is applicable to the states via the fourteenth amendment (U.S. Const., amend. XIV), it is appropriate to apply federal case law to Plaintiffs' claim.

65. The four casinos subject to the surcharge argued "that a takings analysis should apply whenever the government takes property, whether real or monetary, from one party and gives it to another and that there is a need for heightened scrutiny to ensure a public purpose is being served." *Id.* at 81. The supreme court rejected this argument on grounds that both state and federal takings clauses apply only to government action against real property.

> *"It is well settled that the takings clauses of the federal and state constitutions apply only to the state's exercise of eminent domain and not to the state's power of taxation. . . . The same principle applies to fees, whether for certain services or licensing. In Mlade v. Finley, 112 Ill. App. 3d 914, 445 N.E.2d 1240, 68 Ill. Dec. 387 (1983), the plaintiffs challenged certain circuit court filing fees as a violation of, inter alia, the takings clause. Mlade, 112 Ill. App. 3d at 916. The appellate court rejected the plaintiffs' argument "because the 'just compensation' [takings clause] provisions (Ill. Const. 1970, art. I, sec. 15; U.S. Const., amends. V and XIV, sec. 1) apply only to exercises of the power of eminent domain, not to applications of the authority to raise revenue for public purposes."*
>
> *Id.* at 82.

After citing a voluminous number of state and federal cases adhering to this principle, the court rejected the casinos' arguments under *Northern Illinois Home Builders Ass'n v. County of Du Page*, 165 Ill. 2d 25, 649 N.E.2d 384, 208 Ill. Dec. 328 (1995). In that case, plaintiff homebuilders challenged a municipality's imposition of impact fees on new residential communities in order to fund road improvements. The stated purpose of the impact fee was to fund road improvements needed because of expected traffic growth from the new development. *Northern Illinois Home Builders Ass'n*, 165 Ill. 2d at 30. Without much further analysis, the supreme court summarily rejected plaintiffs' takings

argument under *Northern Illinois Home Builders Ass'n*; stating simply, "The fee at issue in Northern Illinois Home Builders Ass'n was inextricably tied to real property and, thus, a takings analysis was appropriate." Empress Casino Joliet Corp. at 83 (emphasis added).

In this case, Plaintiffs Takings Clause claim cannot be tied to real property as required under Illinois' taking clause jurisprudence. Although, money damages can be sought in a takings clause claim, there are no allegations or evidence presented that Plaintiffs currently drawing their pension benefit have suffered a present or will suffer a future loss in benefit payment. Similarly, there is no evidence that those still employed will suffer a similar fate when they eventually retire. Hopefully, such losses will never materialize. For purposes of Plaintiffs claim, however, the potential for such loss is as speculative as the Defendants' stated hope that the Act will lead to the New Funds being more affordably managed and better invested. Finally, there is no argument or evidence presented that the monies transferred from the Local Funds to the New Funds are being used for a different public use (funding road improvement) that impacts Plaintiffs' present or future retirement benefits.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count III. Plaintiffs' cross-motion for summary judgment is denied.

Conclusion

For all the aforementioned reasons, the cross motions for summary judgment are decided in favor of Defendants and against Plaintiffs.

Plaintiffs' cross motion for summary judgment is denied.

Date: 5/25/22

Hon. Robert K. Villa

Kane County Circuit Court THERESA E. BARREIRO ACCEPTED: 6/2/2022 3:27 PM By: DH Env #18123334

APPEAL TO THE SECOND DISTRICT APPELLATE COURT
FROM THE
CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ARLINGTON HEIGHTS POLICE PENSION FUND, et al.,	)	
Plaintiffs-Appellants,	)	
vs.	)	No. 2021 CH 55
JAY ROBERT "J.B." PRITZKER, et al.,	)	
Defendants-Appellees.	)	

NOTICE OF APPEAL

NOW COME the Plaintiffs-Appellants, ARLINGTON HEIGHTS PPF[1]; AURORA PPF, CHAMPAIGN PPF, CHICAGO HEIGHTS PPF, CHICAGO RIDGE PPF, DeKALB PPF, ELGIN PPF, ELMHURST PPF, EVANSTON PPF, MOKENA PPF, PALOS HEIGHTS PPF, RANTOUL PPF, VILLA PARK PPF, WOOD DALE PPF, WOODRIDGE PPF, MAYWOOD FFPF, PLEASANTVIEW FFPF, THOMAS HENDERSON, SCOTT MAY, LAWRENCE SUTTLE, DANIEL HOFFMAN, GENE KEELER, STEVEN ANKARLO, PATRICK SIMONS, PATRICK KELLY, LEE MORRIS, DEAN MANN, WILLIAM MADDEN, RICHARD TROJANKE, PAUL MOTT, JIM KAYES, JAMES ROSCHER, THOMAS QUIGLEY, VICTOR VALDEZ, THOMAS TUREK, WILLIAM CZAJKOWSKI, DAVID DELANEY, RICHARD WEIKAL, DAVID FLOWERS, SR., ROBERT MILLER, DAN RANKOVICH, AARON WERNICK, TIMOTHY SCHOOLMASTER DAVE LOEHAM, MIKE HERBERT, MATTHEW BROSS, MICHAEL TITTLE, SCOTT SHROEDER, BENJAMIN DEFILIPPIS, JORDAN ANDERSON, DENNIS KOLETSOS, WILLIAM BODNER, and FRED MALAYTER, for themselves and on

[1] PPF denotes "Police Pension Fund" and FFPF denotes "Firefighters' Pension Fund."

behalf of a class of all persons and funds similarly situated, by and through their attorneys in this regard, KONICEK & DILLON, P.C., and, pursuant to Illinois Supreme Court Rule 303, hereby appeal to the Appellate Court of Illinois, Second District, from the Order entered on May 25, 2022:

1. Finding in favor of Defendants and against Plaintiffs on the cross motions for summary judgment and denying Plaintiffs' cross motion for summary judgment. (See **EXHIBIT 1**).

The Plaintiffs-Appellants request that the Order of May 25, 2022 be reversed and vacated and for all other relief that is deemed just and equitable.

Daniel F. Konicek, #6205408
Amanda J. Hamilton, #6306098
KONICEK & DILLON, P.C.
21 W. State St.
Geneva, IL 60134
630.262.9655
dan@konicekdillonlaw.com
amanda@konicekdillonlaw.com

Respectfully submitted,

/s/ Amanda J. Hamilton
Attorneys for Plaintiffs-Appellants

IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
SIXTEENTH JUDICAL CIRCUIT

Arlington Heights Police Pension Fund, *et.al.*,	)	
	)	Case. No. 21 CH 55
Plaintiffs,	)	
v.	)	
	)	Hon. Robert K. Villa
	)	Judge Presiding
Governor JB Pritzker, *et.al.*,	)	
Defendant	)	

SUMMARY JUDGMENT ORDER

After a lengthy hearing on the parties' respective cross motions for summary judgment, the Court took this matter under advisement. It is worth noting that where cross-motions for summary judgment are filed, the parties agree that only a question of law is involved and invite the court to decide the issues based on the claims presented and supported by the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. That does not mean that an issue of material fact cannot be found, nor does it obligate a court to render summary judgment. *Id.*

Having reviewed the parties' well-supported briefs, orally presented arguments and conducted a thorough review of the relevant case law on the issues presented, the Court finds this case appropriate for summary judgment.

Issues Addressed

Plaintiffs initiated this action seeking, *inter alia*[1], a declaration that Public Act 101-0610 ("the Act") is unconstitutional as a matter of law because the Act violates protections afforded Plaintiffs under the Pension Protection Clause (Ill. Const. art I, § 5) and Takings Clause (Ill. Const. art I, § 15) of the Illinois Constitution. Because the parties' briefs present a well-developed history of the Act and its impact on the former Articles 3 and 4 of the Illinois Pension Code, 40 ILCS 5/1-101*et seq.* (the "Prior Code"), such facts will not be restated here.

Generally, however, effective January 1, 2020 the Act reduced Illinois' approximately 650 locally controlled police and firefighter pension funds ("the Local Funds") down to two statewide funds – one for police pensions and one for firefighter pensions (the "New Funds"). Defendants contend at length that such a drastic change in how Illinois' police and firefighter pensions are managed (and invested) will bring much needed financial improvements beneficial to both the taxed public and fund beneficiaries. Plaintiffs reject this conclusion. Because Plaintiffs' claims are not due process claims where a rational basis or strict scrutiny analysis would apply, the General Assembly's purported reasoning is of no moment here.

Plaintiffs' claims focus instead on the Act's obvious change as to how pension fund members choose who will sit on their pension fund boards and

[1] See Order dated 9/17/21 dismissing the Plaintiff Funds as improper plaintiffs and addressing Defendants initial motions to dismiss. As such, the "Plaintiffs" and "Claims" herein refer only to the individual plaintiffs and their respective individual claims.

how the New Funds are initially funded. Previously, a five-member board governed the Local Funds, with two members elected by active members and one elected by beneficiaries (collectively herein "the members"). *40 ILCS 5/3-128; 5/4-121.* Each New Fund board has nine members elected statewide. The members are elected as follows: 1) three members are elected from among the officers or executives of the Local Funds' municipalities; 2) three members are elected from among the currently active participants in the local funds; 3) two members are elected from among the beneficiaries of the local funds elected by those beneficiaries; and 4) one member is recommended by the Illinois Municipal League and appointed by the Governor, subject to Senate confirmation. *40 ILCS 5/22B-115, 40 ILCS 5/22C-115.*

Plaintiffs allege that the Act violates the Pension Clause by severely diminishing and impairing their rights to vote for locally controlled pension fund board members. More specifically, that the change from voting locally and with a limited number of co-members to voting from among all active or beneficiary members statewide "substantially and unconstitutionally dilut[es] the voting power of each Individual." Plaintiffs contend that because their voting rights are derived from their status as active or beneficiary members those voting rights are among the "benefits" protected by the Pension Clause.

Plaintiffs separately claim the Act violates the Takings Clause (Ill. Const. 1970 art.1 §15) by taking or damaging Plaintiffs private property (money

presently in the Local Funds) for public use (to pay for the New Funds' startup and administrative costs and secure a possible $15M loan).

Analysis

1. The Act Significantly Impacts Plaintiffs' Voting Rights.

It is undisputed that prior to the Act, there were approximately 650 local police and firefighter pension funds in Illinois and that each fund was governed by a five-member board of directors; three of whom were elected by that funds active and retired members. It is also undisputed that the Act eliminated all of the Local Funds boards in favor of two statewide boards governing the New Funds. Plaintiffs' Amended Complaint illustrates the resulting impact the Act has on an individual member's voting right as follows:

> a. Plaintiff WILLIAM CZAJKOWSKI is an active participant in the PALOSHEIGHT POLICE PENSION FUND;
>
> Prior to the January 1, 2020 effective date of Public Act 101-0610, he had the benefit of a 3.5% vote (1 out of 28) for the two active- participant-selected members of the five-person board of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 1.43% say regarding that board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/13,804 vote (1 out of 13,804) for the three active-participant- selected members of the nine-person Permanent Board, and thus, effectively just a 0.0025% say regarding the Permanent Board's selection of an investment manager or advisor.

b. Plaintiff DAVID DELANEY is a retired-beneficiary participant in thePALOS HEIGHT POLICE PENSION FUND;

> Prior to the January 1, 2020 effective date of Public Act 101-0610, hehad the benefit of a 4.5% vote (1 out of 22) for the one beneficiary- selected member of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 0.91% say regarding the Board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/11,432 vote (1 out of 11,432) for the two beneficiary-selected members of the nine-person Permanent Board, and thus, effectively just a 0.0019% say regarding the Permanent Board's selection of an investment manager or advisor.

(Compl, ¶58)

While they concede having no control of what the elected board members invest in, etc., Plaintiffs maintain their protected benefit lay in "voting the bums out" at the end of their term and electing new board members Plaintiffs believe might better manage their fund. As illustrated above, the Act undeniably diminished the weight of each individual's board member vote. Not only numerically, but in the practical reality that engaging with member voters as 1 of 28 (Plaintiff CZAJKOWSKI) or 1 of 22 (Plaintiff DELANY) provides a more meaningful opportunity to influence which board members are voted for than being 1 out of 13,804 (Plaintiff CZAJKOWSKI) and 1 out of 11,432 (Plaintiff DELANY) members scattered across the State. Whether this violates Plaintiffs' constitutionally protected rights is not claimed under traditional voting rights protections.

2. Traditional Voting Rights Claims are Not at Issue.

Our supreme court has long held "that legislation affecting any stage of the election process implicates the right to vote." See *Graves v. Cook Cty. Republican Party*, 2020 IL App (1st) 181516, ¶ 54, 445 Ill. Dec. 126, 136, 166 N.E.3d 155, 165 (referencing a history of related voting cases). In the case at bar, one of those cases, *Tully v. Edgar*, 171 Ill. 2d 297, 215 Ill. Dec. 646, 664 N.E.2d 43 (1996), was discussed at some length during oral argument and must be addressed here.

In *Tully*, a public act amended the process of selecting the University of Illinois' Board of Trustees from a public election to an appointive system. Then-serving board members were summarily dismissed before their six-year terms had expired and their replacements were thereafter appointed and installed. Although the *Tully* plaintiffs acknowledged the General Assembly had the power to change their offices from an elective to an appointed position, they claimed that, without a cause finding, removal from their positions mid-term violated several provisions of both the United States and Illinois Constitutions. *Id.* at 303-304. *Tully* concluded the General Assembly had acted unconstitutionally because it nullified the voters' choice by eliminating, midterm, the right of the elected officials to serve out the balance of their terms. *Tully*, 171 Ill. 2d at 312. Of note, is that the *Tully* court observed that the legislature could have achieved its goal of switching to an appointed member board without encroaching on the

right to vote if it had allowed the elected trustees to finish their terms and then be succeeded by appointed trustees. *Id.* at 312.

A year after *Tully* was decided, the Illinois Supreme Court issued its opinion in *E. St. Louis Fed'n. of Teachers, Local 1220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 414, 227 Ill. Dec. 568, 577, 687 N.E.2d 1050, 1059 (1997)[2]. In that case, the Circuit Court of St. Clair County, had determined an emergency financial assistance statute was unconstitutional because the statute provided for the removal of an elected superintendent of a school district and several school board members. On direct appeal, our supreme court reversed the trial court after finding the statute constitutional on its face. The Supreme Court ultimately determined, however, that the statue violated the removed officials' procedural due process rights by not affording them notice and an opportunity to be heard before removal pursuant to the statute. *E. St. Louis Fed'n.of Teachers, Local 1220,* 178 Ill. 2d at 422.

The main distinction between the case at bar and the aforementioned cases is that those cases involved traditional "voters rights" claims such as procedural due process, equal protection, constitutional vagueness, improper delegation of legislative authority, and other guarantees found in the United States and Illinois Constitutions (*e.g.*, U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2, art. III, § 1). After an objective review of Plaintiffs' Amended

[2] Plaintiffs cited to *E. St. Louis Fed'n.of Teachers, Local 1220* in its Combined Response to the Defendants' Motion to Dismiss and Counter Motion for Summary Judgment to support the Plaintiff Funds argument they had standing to bring a Takings Clause claim.

Complaint, the Court finds that these types of claims are not at issue here. Rather, Plaintiffs' claims are limited to whether the Act violates the Pension Clause or Takings Clause. It is axiomatic that a court's determination at summary judgment must be limited to the record before it. Therefore, the Court cannot determine this case against traditional voting rights considerations.

3. Voting is Not Presently a "Benefit" under the Pension Clause.

The Parties' briefing provides a comprehensive history of Illinois Supreme Court cases involving challenges to legislation brought under the Pension Clause. This Court's review of each cited authority (as well as a further Shepard's® review of same for additional authority) confirms what we all know – Illinois' reviewing courts have yet to hold that the right to vote for pension fund board members falls within the protections of the Pension Clause. Nevertheless, the parties' briefs and oral arguments are properly focused on whether the scope of the Pension Clause's term "benefits" is restricted to monies due pension members upon retirement. After lengthy consideration of the developed case law, the clear answer is – sort of, but mostly yes.

Less than a year before Plaintiffs initiated this case, the Illinois Supreme Court issued its opinion in *Williamson Cty. Bd. of Comm'rs v. Bd. of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, 449 Ill. Dec. 248, 178 N.E.3d 1099. The quoted passage below (with internal citations intact) provides the framework for deciding this case.

This court's jurisprudence on the Illinois Constitution's pension protection clause is well developed. Found in article XIII, section 5, of the Illinois Constitution, the clause provides that

> *"[m]embership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5.*

Our decisions have uniformly construed its plain meaning to protect ***any benefit*** *of the enforceable contractual relationship arising from membership in one of the pension or retirement systems of the State and any local unit of government or school district from diminishment or impairment. Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund, 2018 IL 122793, ¶ 25, 429 Ill. Dec. 677, 125 N.E.3d 383; In re Pension Reform Litigation, 2015 IL 118585, ¶ 45, 392 Ill. Dec. 1, 32 N.E.3d 1 (Heaton); Kanerva v. Weems, 2014 IL 115811, ¶ 38, 383 Ill. Dec. 107, 13 N.E.3d 1228.*

In other words, "a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to ***the benefits*** *of that contractual relationship." Jones v. Municipal Employees' Annuity & Benefit Fund, 2016 IL 119618, ¶ 29, 401 Ill. Dec. 454, 50 N.E.3d 596.* ***The constitutional protection is broad because it "protects all of the benefits that flow from the contractual relationship arising from membership in a public retirement system****." Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶ 54, 402 Ill. Dec. 1, 51 N.E.3d 753 (citing Kanerva, 2014 IL 115811, ¶ 38). That protection "attach [es] once an individual first embarks upon employment in a position covered by a public retirement system, not when the employee ultimately retires." Heaton, 2015 IL 118585, ¶ 46. Effectively, the clause prohibits unilateral legislative action that diminishes or impairs the constitutionally protected benefit. Matthews, 2016 IL 117638, ¶ 54 (citing Kanerva, 2014 IL 115811, ¶ 40).*

Williamson Cty. Bd. of Comm'rs, 2020 IL 125330, ¶¶ 31-32 (emphasis added) (also citing, *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 514 N.E.2d 184, 112 Ill. Dec. 718 (1987) (denial of the option to purchase military service credit from the State University Retirement System held unconstitutional under the Pension Clause).

The language emphasized (by this Court) in the above quote appears to suggest that the "benefits" protected under the Pension Clause must be broader than the simple payment a member is to receive upon retirement. Firstly, the term "benefits" is plural; which, on its face, cannot be read to mean a singular (undefined) something. The *Williamson* opinion seemingly makes that more clear by referring to a "broad" protection of "all the benefits that flow from the contractual relationship arising from membership in a public retirement system." *Id.* A careful review, however, of each case cited with approval in *Williamson* suggests the Illinois Supreme Court does not mean what this language suggests.

That is because all of the cases using the "broad protection" and "all benefits" language when holding that an act of the General Assembly violated the Pension Clause (*Carmichael, In re Pension Reform Litigation (Heaton), Kanerva, Buddell, Jones*) involve Plaintiffs who were denied a "benefit" that could be directly tied to a change in the value of their future retirement payments. These included, for example, removal from membership in IMRF (*Williamson*), changing health insurance premium subsidies for retirees (*Kanerva),* changing the time-period to purchase military service credit from the State University Retirement System (*Buddell),* and the right to earn service credit on a leave of absence to work for a local labor organization (*Carmichael).*

Thus, the seemingly expanding language suggesting there is more than one benefit ("benefits") and that "all rights" should be "broadly" protected has, in

practice, not been applied as Plaintiff argue it should. Instead, it has been applied only to public acts that directly affect the value of a plaintiff's pension benefit. "The common-law doctrine that holds that courts should not compromise the stability of the legal system by declaring legislation unconstitutional when it is not required is "[o]ne of the most firmly established'" in constitutional law (citations omitted). . . and one that [the Illinois Supreme Court] has applied with diligence." *People v. Brown*, 2020 IL 124100, ¶ 27, 444 Ill. Dec. 612, 619, 164 N.E.3d 1187, 1194. In this case, the Court finds that it cannot extend the term "benefits" beyond the reach of prior Illinois Supreme Court cases (that this Court is aware of) to find the challenged legislation unconstitutional against the Pension Clause's protections.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count I. Plaintiffs' cross-motion for summary judgment is denied.

4. The Takings Clause is Not Implicated.

Plaintiffs remaining claim (Count III) alleges the Act violates the Illinois Constitution's takings clause, which provides that "private property shall not be taken or damaged for public use without just compensation as provided by law." *Ill. Const. 1970, art. I, § 15.* Specifically, Plaintiffs allege that the Act "diminishes and impairs the pension benefits to which each [Plaintiff] is entitled, including but not limited to ultimately bear all costs of transition up to $15,000,000, plus interest." (Amend Compl. ¶87). As an initial matter, it is unquestionable that monies within the Local Funds pay for the New Funds' startup costs for administration and operation. Under Count III that fact only presents injury to Plaintiffs if such monies are "property" within in the meaning of Illinois' takings clause.[3] Our supreme court provides a comprehensive analysis of takings clause jurisprudence in *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008). Although not a recent opinion, it remains good case law on the subject.

Empress Casino involved a challenge to the 2006 passing of Public Act 94-804, which imposed, for a two-year period, a 3% surcharge on four riverboat casinos in Illinois that had adjusted gross receipts (AGR) of over $ 200 million in 2004. Five other Illinois riverboat casinos that had AGRs below $ 200 million were not subject to the surcharge. *Empress Casino Joliet Corp.*, 231 Ill. 2d. at

[3] Although Plaintiffs refer only to Illinois' takings clause, because the federal takings clause is so similar ("nor shall private property be taken for public use, without just compensation.") (U.S. Const., amend. V) and is applicable to the states via the fourteenth amendment (U.S. Const., amend. XIV), it is appropriate to apply federal case law to Plaintiffs' claim.

65. The four casinos subject to the surcharge argued "that a takings analysis should apply whenever the government takes property, whether real or monetary, from one party and gives it to another and that there is a need for heightened scrutiny to ensure a public purpose is being served." *Id.* at 81. The supreme court rejected this argument on grounds that both state and federal takings clauses apply only to government action against real property.

> *"It is well settled that the takings clauses of the federal and state constitutions apply only to the state's exercise of eminent domain and not to the state's power of taxation. . . . The same principle applies to fees, whether for certain services or licensing. In Mlade v. Finley, 112 Ill. App. 3d 914, 445 N.E.2d 1240, 68 Ill. Dec. 387 (1983), the plaintiffs challenged certain circuit court filing fees as a violation of, inter alia, the takings clause. Mlade, 112 Ill. App. 3d at 916. The appellate court rejected the plaintiffs' argument "because the 'just compensation' [takings clause] provisions (Ill. Const. 1970, art. I, sec. 15; U.S. Const., amends. V and XIV, sec. 1) apply only to exercises of the power of eminent domain, not to applications of the authority to raise revenue for public purposes."*
>
> *Id.* at 82.

After citing a voluminous number of state and federal cases adhering to this principle, the court rejected the casinos' arguments under *Northern Illinois Home Builders Ass'n v. County of Du Page*, 165 Ill. 2d 25, 649 N.E.2d 384, 208 Ill. Dec. 328 (1995). In that case, plaintiff homebuilders challenged a municipality's imposition of impact fees on new residential communities in order to fund road improvements. The stated purpose of the impact fee was to fund road improvements needed because of expected traffic growth from the new development. *Northern Illinois Home Builders Ass'n*, 165 Ill. 2d at 30. Without much further analysis, the supreme court summarily rejected plaintiffs' takings

argument under *Northern Illinois Home Builders Ass'n*; stating simply, "The fee at issue in Northern Illinois Home Builders Ass'n was inextricably tied to real property and, thus, a takings analysis was appropriate." Empress Casino Joliet Corp. at 83 (emphasis added).

In this case, Plaintiffs Takings Clause claim cannot be tied to real property as required under Illinois' taking clause jurisprudence. Although, money damages can be sought in a takings clause claim, there are no allegations or evidence presented that Plaintiffs currently drawing their pension benefit have suffered a present or will suffer a future loss in benefit payment. Similarly, there is no evidence that those still employed will suffer a similar fate when they eventually retire. Hopefully, such losses will never materialize. For purposes of Plaintiffs claim, however, the potential for such loss is as speculative as the Defendants' stated hope that the Act will lead to the New Funds being more affordably managed and better invested. Finally, there is no argument or evidence presented that the monies transferred from the Local Funds to the New Funds are being used for a different public use (funding road improvement) that impacts Plaintiffs' present or future retirement benefits.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count III. Plaintiffs' cross-motion for summary judgment is denied.

Conclusion

For all the aforementioned reasons, the cross motions for summary judgment are decided in favor of Defendants and against Plaintiffs.

Plaintiffs' cross motion for summary judgment is denied.

Date: 5/25/22

Hon. Robert K. Villa

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ARLINGTON HEIGHTS POLICE PENSION FUND
Plaintiff/Petitioner

v.

JAY ROBERT PRITZKER
Defendant/Respondent

Reviewing Court No: 2-22-0198
Circuit Court/Agency No: 2021CH000055
Trial Judge/Hearing Officer: HONORABLE ROBERT VILLA

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 4

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 3 of 4

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

ontents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ARLINGTON HEIGHTS POLICE PENSION FUND

Plaintiff/Petitioner

v.

JAY ROBERT PRITZKER

Defendant/Respondent

Reviewing Court No: 2-22-0198
Circuit Court/Agency No: 2021CH000055
Trial Judge/Hearing Officer: HONORABLE ROBERT VILLA

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

PL 101–610, November 16, 1990, 104 Stat 3127

UNITED STATES PUBLIC LAWS

101st Congress - Second Session

Convening January 23, 1990

Additions and Deletions are not identified in this document.
8848

PL 101–610 (S 1430)

November 16, 1990

NATIONAL AND COMMUNITY SERVICE ACT OF 1990

An Act to enhance national and community service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

<< 42 USCA § 20501 NOTE >>

(a) SHORT TITLE.—This Act may be cited as the "National and Community Service Act of 1990".
(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 602. Exchange program with countries in transition from totalitarianism to Democracy.

<< 42 USCA § 12501 >>

SEC. 2. PURPOSES.

It is the purpose of this Act to—

(1) renew the ethic of civic responsibility in the United States;

(2) ask citizens of the United States, regardless of age or income, to engage in full-time or part-time service to the Nation;

(3) begin to call young people to serve in programs that will benefit the Nation and improve the life chances of the young through the acquisition of literacy and job skills;

(4) enable young Americans to make a sustained commitment to service by removing barriers to service that have been created by high education costs, loan indebtedness, and the cost of housing;

(5) build on the existing organizational framework of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens, particularly youth and older Americans;

(6) involve participants in activities that would not otherwise be performed by employed workers; and

(7) generate additional service hours each year to help meet human, educational, environmental, and public safety needs, particularly those needs relating to poverty.

TITLE I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Subtitle A—General Provisions

<< 42 USCA § 12511 >>

SEC. 101. DEFINITIONS.

As used in this title:

(1) ADULT VOLUNTEER.—The term "adult volunteer" means—

(A) an individual who is beyond the age of compulsory schooling, including an older American, an individual with a disability, and a parent;

(B) an employee of a private business;

(C) an employee of a public or nonprofit agency; or

(D) any other individual working without financial remuneration in an education institution to assist students or out-of-school youth.

(2) COMMISSION.—The term "Commission" means the Commission on National and Community Service established under section 190.

(3) COMMUNITY–BASED AGENCY.—The term "community-based agency" means a private nonprofit organization that is representative of a community or a significant segment of a community and that is engaged in meeting human, educational, or environmental community needs, including churches and other religious entities and community action agencies.

(4) CREW SUPERVISOR.—The term "crew supervisor" means the adult staff individual who is responsible for supervising a crew of participants, including the crew leader.

(5) ECONOMICALLY DISADVANTAGED.—The term "economically disadvantaged" with respect to youth has the same meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

(6) ELEMENTARY SCHOOL.—The term "elementary school" has the same meaning given such term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

(7) INDIAN LANDS.—The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes that is subject to restrictions on alienation imposed by the United States.

(8) INDIAN TRIBE.—The term "Indian tribe" means an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native

Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(9) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(10) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the same meaning given such term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

(11) LOCAL GOVERNMENT AGENCY.—The term "local government agency" means a public agency that is engaged in meeting human, social, educational, or environmental needs.

(12) OUT–OF–SCHOOL YOUTH.—The term "out-of-school youth" means an individual who—

(A) has not attained the age of 27;

(B) has not completed college or the equivalent thereof; and

(C) is not enrolled in an elementary or secondary school or institution of higher education.

(13) PARTICIPANT.—The term "participant" means an individual enrolled in a program that receives assistance under this title.

(14) PARTNERSHIP PROGRAM.—The term "partnership program" means a program through which adult volunteers, public or private agencies, institutions of higher education, or businesses assist a local educational agency.

(15) PLACEMENT.—The term "placement" means the matching of a participant with a specific project.

(16) PROGRAM.—The term "program" means an activity carried out with assistance provided under this title.

(17) PROGRAM AGENCY.—The term "program agency" means—

(A) a Federal or State agency designated to manage a youth corps program;

(B) the governing body of an Indian tribe that administers a youth corps program; or

(C) a local applicant administering a youth corps program.

(18) PROJECT.—The term "project" means an activity that results in a specific identifiable service or product that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(19) PUBLIC LANDS.—The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by an agency or instrumentality of a State or local government.

(20) SECONDARY SCHOOL.—The term "secondary school" has the same meaning given such term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

(21) SERVICE–LEARNING.—The term "service-learning" means a method—

(A) under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community;

(B) that is integrated into the students' academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity;

(C) that provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and

(D) that enhances what is taught in school by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others.

(22) SERVICE OPPORTUNITY.—The term "service opportunity" means a program or project, including service learning programs or projects, that enables students or out-of-school youth to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

(23) SPECIAL SENIOR SERVICE MEMBER.—The term "special senior service member" means an individual who is age 60 or over and willing to work full-time or part-time in conjunction with a full-time national service program.

(24) SPONSORING ORGANIZATION.—The term "sponsoring organization" means an organization, eligible to receive assistance under this title, that has been selected to provide a placement for a participant.

(25) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified.

(26) STATE EDUCATIONAL AGENCY.—The term "State educational agency" has the same meaning given such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(27) STUDENT.—The term "student" means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-or part-time basis.

(28) SUMMER PROGRAM.—The term "summer program" means a youth corps program authorized under this title that is limited to the months of June, July, and August.

(29) YOUTH CORPS PROGRAM.—The term "youth corps program" means a program, such as a conservation corps or youth service program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

<< 42 USCA § 12512 >>

SEC. 102. AUTHORITY TO MAKE STATE GRANTS.

The Commission may, in accordance with the provisions of this title, make grants to States, or to local applicants, to enable such States or applicants to carry out national or community service programs under subtitles B, C, D, or E.

Subtitle B—School-Aged Service

PART I—GENERAL PROGRAM

<< 42 USCA § 12501 NOTE >>

SEC. 110. SHORT TITLE.

This subtitle may be cited as the "Serve–America: The Community Service, Schools and Service–Learning Act of 1990".

<< 42 USCA § 12521 >>

SEC. 111. GENERAL AUTHORITY.

(a) IN GENERAL.—The Commission, in consultation with the Secretary of Education, may make grants under section 102 to States or local applicants for—

(1) planning and building State capacity (which may be accomplished through grants and contracts with qualified organizations) for implementing statewide, school-aged service-learning programs, including—

(A) preservice and in-service training for teachers, supervisors, and personnel from community organizations in which service opportunities will be provided that will be conducted by qualified individuals or organizations that have experience in service-learning programs;

(B) developing service-learning curricula, including age-appropriate learning components for students to analyze and apply their service experiences;

(C) forming local partnerships to develop school-based community service programs in accordance with this subpart;

(D) devising appropriate methods for research and evaluation of the educational value of youth service opportunities and the effect of youth service programs on communities;

(E) establishing effective outreach and dissemination to ensure the broadest possible involvement of nonprofit community-based organizations and youth-service agencies with demonstrated effectiveness in their communities; and

(F) integration of service-learning into academic curricula;

(2) the implementation, operation, or expansion of statewide, school-based service-learning programs through State distribution of Federal funds made available under this subtitle to projects and activities coordinated and operated by local partnerships among—

(A) local educational agencies; and

(B) one or more community partners that—

(i) shall include a public or private nonprofit organization that will make service opportunities available for participants, and that is representative of the community in which such services will be provided; and

(ii) may include a private for-profit business organization or private elementary and secondary school;

(3) the implementation, operation, or expansion of community service programs for school dropouts, out-of-school youth, and other youth through State distribution of Federal funds made available under this subtitle to projects and activities coordinated and operated by local partnerships among—

(A) one or more public or private nonprofit organizations that work with disadvantaged youth; and

(B) one or more community partners that shall include a public or private nonprofit organization that will make service opportunities available for participants; and

(4) the implementation, operation, or expansion of programs involving adult volunteers in schools, or partnerships of schools and public or private organizations, to improve the education of at-risk students, school dropouts, and out-of-school youth through State distribution of Federal funds made available under this part to projects and activities coordinated and operated by local partnerships among—

(A) local education agencies; and

(B) one or more public or private nonprofit organization or private for-profit business.

(b) DIRECT GRANTS.—In any fiscal year in which a State does not participate in programs under this subtitle, the Commission may use the allotment of that State to make direct grants for the purposes described in subsection (a) to local applicants in that State. The Commission shall apply the criteria described in section 114 in evaluating such local applications.

<< 42 USCA § 12522 >>

SEC. 112. ALLOTMENTS.

(a) RESERVATIONS.—Of the amounts appropriated to carry out this subtitle for any fiscal year, the Commission shall reserve not more than 1 percent for payments to Indian tribes, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and Palau, until such time as the Compact of Free Association is ratified, to be allotted in accordance with their respective needs.

(b) ALLOTMENT.—The remainder of the sums appropriated to carry out this subtitle shall be allotted among the States as follows:

(1) From 50 percent of such remainder the Secretary shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as the school-age population of the State bears to the school-age population of all States.

(2) From 50 percent of such remainder the Secretary shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as allocations to the State for the previous fiscal year under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 bears to such allocations to all States.

(c) LIMITATION.—For any period during which a State is carrying out planning activities under section 111(a)(1) prior to implementation under section 111(a)(2), a State may be paid not more than 25 percent of its allotment under this section.

(d) REALLOTMENT.—The amount of any State's allotment for any fiscal year under this section that the Commission determines will not be required for that fiscal year shall be available for reallotment to other States as the Commission may determine appropriate.

(e) EXCEPTION.—Notwithstanding this section, if less than $20,000,000 is made available in each fiscal year to carry out this subtitle, the Commission shall award grants to States on a competitive basis.

(f) DEFINITIONS.—For purposes of this section:

(1) SCHOOL–AGE POPULATION.—The term “school-age population” means the population aged 5 through 17, inclusive.

(2) STATE.—The term “State” includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

<< 42 USCA § 12523 >>

SEC. 113. STATE APPLICATION.

To be eligible to receive a grant under this subtitle a State, acting through the State educational agency, shall prepare and submit to the Commission, an application at such time, in such manner, and containing such information as the Commission shall reasonably require, including a description of the manner in which—

(1) local applications will be ranked by the State according to the criteria described in section 114, and in a manner that ensures the equitable treatment of local applications submitted by both local educational agencies and community-based organizations;

(2) service programs within the State will be coordinated with each other and with other Federally assisted education programs, training programs, social service programs, and other appropriate programs that serve youth;

(3) cooperative efforts among local educational agencies, local government agencies, community-based agencies, businesses, and State agencies to develop and provide service opportunities, including those that involve the participation of urban, suburban, and rural youth working together, will be encouraged;

(4) economically and educationally disadvantaged youths, including individuals with disabilities, youth with limited basic skills or learning disabilities, youth in foster care who are becoming too old for foster care, youth of limited English proficiency, homeless youth and youth with disabilities, are assured of service opportunities;

(5) service programs that receive assistance under this subtitle will be evaluated;

(6) programs that receive assistance under this subtitle will serve urban and rural areas and any tribal areas that exist within such State;

(7) training and technical assistance will be provided to local grantees by qualified and experienced individuals employed by the State or through grant or contract with experienced content specialist and youth service resource organizations;

(8) non–Federal assistance will be used to expand service opportunities for students and out-of-school youth;

(9) information and outreach services will be disseminated and utilized to ensure the involvement of a broad range of organizations, particularly community-based organizations;

(10) the State will keep such records and provide such information to the Secretary as may be required for fiscal audits and program evaluation;

(11) the State will give special consideration to providing assistance to projects that will provide academic credit to participants; and

(12) the State will assure compliance with the specific requirements of this subtitle.

<< 42 USCA § 12524 >>

SEC. 114. LOCAL APPLICATIONS.

(a) IN GENERAL.—A partnership that desires to receive financial assistance under this subtitle shall prepare and submit to the State Educational Agency a proposal that meets the requirements of this section. Such proposal shall be submitted at such time, in such manner, and containing such information as the State Educational Agency may reasonably require.

(b) REQUIREMENTS OF PROPOSAL.—A proposal submitted under subsection (a) shall—

(1) contain a written agreement, between the members of the local partnership, stating that the program was jointly developed by the parties and that the program will be jointly executed by the parties;

(2) establish and specify the membership and role of an advisory committee that shall consist of representatives of community-based agencies including community action agencies, service recipients, youth-serving agencies, youth, parents, teachers, administrators, agencies that serve older adults, school board members, labor, and business;

(3) describe the goals of the program which shall include goals that are quantifiable, measurable, and demonstrate any benefits that flow from the program to the participants and the community;

(4) describe service opportunities to be provided under the program that shall include evidence that participants will make a sustained commitment to the service project;

(5) describe the manner in which the participants in the program will be recruited, including any special efforts that will be utilized to recruit out-of-school youth with the assistance of community-based agencies;

(6) describe the manner in which participants in the program were or will be involved in the design and operation of the program;

(7) describe the qualifications, and responsibilities of the coordinator of the program assisted under this subtitle;

(8) describe preservice and inservice training for supervisors, teachers, and participants in the program;

(9) describe the manner in which exemplary service will be recognized;

(10) describe any potential resources that will permit continuation of the program, if needed, after the assistance received under this subtitle has ended;

(11) disclose whether the program plans include preventing and treating school-age drug and alcohol abuse and dependency; and

(12) contain assurances that, prior to the placement of a participant, the program will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program.

(c) SCHOOL–BASED AND COMMUNITY–BASED SERVICE LEARNING PROGRAM.—If an applicant under this section intends to operate a program described in section 111(a)(2) or 111(a)(3) such applicant, in addition to providing the information described in subsection (b), shall provide additional information that shall include—

(1) an assurance that the applicant will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to reflect on service experiences and expected learning outcomes;

(2) a disclosure of whether or not the participants will receive academic credit for participation in the program;

(3) the target levels of participants in the program and the target levels for the hours of service that such participants will provide individually and as a group;

(4) the proportion of expected participants in the program who are educationally or economically disadvantaged, including participants with disabilities;

(5) the ages or grade levels of expected participants in the program;

(6) other relevant demographic information concerning such expected participants; and

(7) assurances that participants in the program will be provided with information concerning VISTA, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), chapter 30 of title 38, United States Code, chapter 106 of title 10, United States Code, full-time Youth Service Corps and National Service programs receiving assistance under this title, and other service options and their benefits (such as student loan deferment and forgiveness) as appropriate.

(d) PARTNERSHIP PROGRAM.—If an applicant under this section intends to operate an adult role partnership program, under section 111(a)(4) such applicant, in addition to the information required to be included in the application under subsection (b), shall describe the students who are to be assisted through such program, including the ages and grade levels of such students.

<< 42 USCA § 12525 >>

SEC. 115. PRIORITY; PRIVATE SCHOOL PARTICIPATION.

(a) IN GENERAL.—In providing assistance under this subtitle, the State educational agency, or the Commission if section 111(b) applies, shall give priority to applications that describe programs that—

(1) involve participants in the design and operation of the program;

(2) are in the greatest need of assistance, such as programs targeting low-income areas;

(3) involve students from both public and private elementary and secondary schools or individuals of different ages, races, sexes, ethnic groups, disabilities and economic backgrounds serving together;

(4) are integrated into the academic program; or

(5) involve a focus on substance abuse prevention or school drop-out prevention.

(b) ADULT VOLUNTEER AND PARTNERSHIP PROGRAM.—In the case of an adult volunteer and partnership program (as described in section 111(a)(4)) the State educational agency, or the Commission, if section 111(b) applies, shall give priority to applications that contain a description of programs—

(1) that involve older Americans or parents as adult volunteers;

(2) that involve a partnership between an educational institution and a private business in the community;

(3) that include a focus on substance abuse prevention, school drop-out prevention, or nutrition; or

(4) that will improve basic skills and reduce illiteracy.

(c) PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE SCHOOLS.—

(1) IN GENERAL.—To the extent consistent with the number of children in the State or in the school district of the local educational agency involved who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall (after consultation with appropriate private school representatives) make provision—

(A) for the inclusion of services and arrangements for the benefit of such children so as to assure the equitable participation of such children in the programs or projects implemented to carry out the purposes and provide the benefits described in this subtitle; and

(B) for the training of the teachers of such children so as to assure the equitable participation of such teachers in the programs or projects implemented to carry out the purposes and provide the benefits described in this subtitle.

(2) WAIVER.—If a State or local educational agency or institution of higher education is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by paragraph (1), or if the Secretary determines that a State or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of the Elementary and Secondary Education Act of 1965.

<< 42 USCA § 12526 >>

SEC. 116. FEDERAL AND LOCAL CONTRIBUTIONS.

(a) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of a grant or contract for a project under this subtitle may not exceed—

(A) 90 percent of the total cost of a project for the first year for which the project receives assistance under this subtitle;

(B) 80 percent of the total cost of a project for the second year for which the project receives assistance under this subtitle; and

(C) 70 percent of the total cost of a project for the third year for which the project receives assistance under this subtitle.

(2) CALCULATION.—The State and local share of the costs of a project may be in cash or in kind fairly evaluated, including facilities, equipment, or services.

(b) WAIVER.—The Secretary may waive the requirements of subsection (a) with respect to any project in any fiscal year if the Secretary determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

<< 42 USCA § 12527 >>

SEC. 117. USES OF FUNDS; LIMITATIONS.

(a) STATE USES OF FUNDS.—The State educational agency may reserve, from funds made available to such agency under this subtitle—

(1) not more than 5 percent of such funds for administrative costs for any fiscal year;

(2) not more than 10 percent of such funds to build capacity through training, technical assistance, curriculum development, and coordination activities, described in section 111(a)(1);

(3) not less than 60 percent of such funds to carry out school-based service learning programs described in section 111(a)(2);

(4) not less than 15 percent of such funds to carry out community-based service programs described in section 111(a)(3); and

(5) not more than 10 percent of such funds to carry out adult volunteer and partnership programs described in section 111(a)(4).

(b) AUTHORIZED ACTIVITIES FOR LOCAL PROJECTS.—

(1) IN GENERAL.—Local projects may use funds made available under this subtitle for the supervision of participating students, program administration, training, reasonable transportation costs, insurance, and for other reasonable expenses.

(2) LIMITATION.—Funds made available under this subtitle may not be used to pay any stipend, allowance, or other financial support to any participant, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this subtitle.

PART II—HIGHER EDUCATION INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

<< 42 USCA § 12531 >>

SEC. 118. HIGHER EDUCATION INNOVATIVE PROJECTS FOR COMMUNITY SERVICE.

(a) PURPOSE.—It is the purpose of this part to support innovative projects to encourage students to participate in community service activities while such students are attending institutions of higher education.

(b) GENERAL AUTHORITY.—The Commission, in consultation with the Secretary of Education, is authorized to make grants to, and enter into contracts with, institutions of higher education (including a combination of such institutions) and other public agencies and nonprofit organizations working in partnership with institutions of higher education—

(1) to enable the institution to create or expand community service activities for students attending that institution;

(2) to encourage student-initiated and student-designed community service projects;

(3) to facilitate the integration of community service into academic curricula, so that students can obtain credit for their community service activities;

(4) to encourage students to participate in community service activities that will engender a sense of social responsibility and commitment to the community;

(5) to encourage students to assist in the teaching of individuals with limited basic skills or an inability to read and write; and

(6) to provide for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize community service activities, taking into consideration the particular needs of a community and the ability of the grantee to actively involve a major part of the community in, and substantially benefit the community by, the proposed community service activities.

(c) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of each grant awarded under this section shall not exceed 50 percent of the cost of the community service activities carried out with each such grant.

(2) NON–FEDERAL SOURCES.—That portion of the costs of programs that receive assistance under this subtitle that are to be paid from sources other than Federal funds may be paid in cash or in kind (fairly evaluated).

(d) APPLICATION FOR GRANT.—To receive a grant under this subtitle, an applicant shall prepare and submit to the Commission, an application at such time, in such manner, and containing such information as the Commission may reasonably require, including—

(1) a description of the proposed program to be established with assistance provided under the grant;

(2) a description of the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed under such program;

(3) a description of whether or not students will receive academic credit for community service activities under the program;

(4) a description of the procedure for training supervisors and participants and for supervising and organizing participants in such proposed program;

(5) a description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(6) a description of the budget for the program; and

(7) assurances that, prior to the placement of a participant in the program, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such project.

Subtitle C—American Conservation and Youth Corps

<< 42 USCA § 12501 NOTE >>

SEC. 120. SHORT TITLE.

This subtitle may be cited as the “American Conservation and Youth Service Corps Act of 1990”.

<< 42 USCA § 12541 >>

SEC. 121. GENERAL AUTHORITY.

The Commission may make grants under section 102 to States or local applicants, to the Secretary of Agriculture, to the Secretary of the Interior, or to the Director of ACTION for the creation or expansion of full-time or summer youth corps programs.

<< 42 USCA § 12542 >>

SEC. 122. ALLOCATION OF FUNDS.

(a) COMPETITIVE GRANT.—The Commission shall award grants under this subtitle on a competitive basis to States or Indian tribes that have submitted applications under section 123.

(b) DIRECT GRANTS.—

(1) IN GENERAL.—In the case of a State that does not apply for a grant under this subtitle or have an application approved under section 123, the Commission may award grants directly to public or private nonprofit agencies with experience in youth programs within such State.

(2) EVALUATION.—

(A) APPLICATION OF CRITERIA.—The Commission shall apply the criteria described in section 123 in determining whether to award a grant to a local applicant under this subsection.

(B) EQUITABLE ALLOCATION.—If more than one local applicant within a State applies for funds, the Commission shall allocate funds among such applicants in such manner as the Commission considers equitable.

(3) INDIAN TRIBES.—An Indian tribe shall be treated the same as a State for purposes of making grants under this subtitle.

(4) GRANT TO FEDERAL AGENCY.—If a State has failed to establish a youth corps program and no local youth corps programs exist within such State, the Commission may make a grant to a Federal agency to directly administer a youth corps program.

(c) LIMITATION.—

(1) CAPITAL EQUIPMENT.—Not to exceed 10 percent of the amount of assistance made available to a program agency under this subtitle shall be used for the purchase of major capital equipment.

(2) ADMINISTRATIVE EXPENSES.—

(A) BY PROGRAM AGENCY.—Not to exceed 5 percent of the amount of assistance made available to a program agency under this subtitle shall be used for administrative expenses.

(B) BY STATE.—Not to exceed 5 percent of the amount of assistance made available to a State under this subtitle shall be used for administrative expenses.

(d) RESERVATION.—

(1) FEDERAL DISASTER RELIEF.—The Commission shall reserve not to exceed 5 percent of the amounts made available in each fiscal year to make grants under this subtitle for Federal disaster relief programs.

(2) INDIAN TRIBES.—The Commission shall reserve not to exceed 1 percent of the amounts made available in each fiscal year to make grants under this subtitle to Indian tribes.

(e) EQUITABLE FUNDING OF CONSERVATION AND SERVICE PROGRAMS.—The Commission shall award an equal number of grants to conservation corps programs and youth corps programs.

<< 42 USCA § 12543 >>

SEC. 123. STATE APPLICATION.

(a) SUBMISSION.—To be eligible to receive a grant under this subtitle, a State or Indian tribe (or a local applicant if section 122(b) applies) shall prepare and submit to the Commission, an application at such time, in such manner, and containing such information as the Commission may reasonably require, including the information required under subsection (b).

(b) GENERAL CONTENT.—An application submitted under subsection (a) shall describe—

(1) any youth corps program proposed to be conducted directly by such applicant with assistance provided under this subtitle; and

(2) any grant program proposed to be conducted by such State with assistance provided under this subtitle for the benefit of entities within such State.

(c) SPECIFIC CONTENT.—To receive a grant under this subtitle to directly conduct a youth corps program, each applicant shall include in the application submitted under subsection (a)—

(1) a comprehensive description of the objectives and performance goals for the program to be conducted, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided by such program;

(2) a plan for the certification of the training skills acquired by participants and the awarding of academic credit to participants for competencies developed through training programs or work experience obtained under this subtitle;

(3) an age-appropriate learning component for participants that includes procedures that permit participants to reflect on service experiences;

(4) an estimate of the number of participants and crew leaders necessary for the proposed program, the length of time that the services of such participants and crew leaders will be required, the support services that will be required for such participants and crew leaders, and a plan for recruiting such participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, homeless youth, youth with disabilities, youth who are in foster care who are becoming too old for foster care, and youth of limited English proficiency;

(5) a list of requirements to be imposed on the sponsoring organizations of participants in the program, including a requirement that a sponsoring organization that invests in a program that receives assistance under this subtitle, by making a cash contribution or by providing free training to participants, shall be given preference over a sponsoring organization that does not make such an investment;

(6) a description of the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), who shall provide for other central elements of a youth corps, such as crew structure and a youth development component;

(7) a description of a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel at program facilities;

(8) a description of the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment that will be provided by such applicant;

(9) a description of the basic standards of work requirements, health, nutrition, sanitation, and safety, and the manner that such standards shall be enforced;

(10) a description of the plan to assign participants to facilities as near to the homes of such participants as is reasonable and practicable;

(11) an assurance that, prior to the placement of a participant under this subtitle, the program agency will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(12) a description of formal social counseling arrangements to be made available to the participant;

(13) a plan for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program; and

(14) such other information as the Commission shall require.

(d) GRANT PROGRAM.—To be eligible to receive a grant under this subtitle, a State shall establish and implement a program to make grants to applicants within the State pursuant to subsection (b)(2) and, in the application submitted under subsection (a), such State shall describe the manner in which—

(1) local applicants will be evaluated;

(2) service programs within the State will be coordinated;

(3) economically and educationally disadvantaged youth, including youth with disabilities, youth with limited basic skills or learning disabilities, youth with limited English proficiency, homeless youth, and youth in foster care who are becoming too old for foster care, will be recruited;

(4) programs that receive assistance under this subtitle will be evaluated;

(5) the State will encourage cooperation among programs that receive assistance under this subtitle and the appropriate State job training coordinating council established under the Job Training and Partnership Act (29 U.S.C. 1501 et seq.);

(6) such State will certify the training skills acquired by each participant and the credit provided to each participant for competencies developed through training programs or work experience obtained under programs that receive assistance under this subtitle; and

(7) prior to the placement of a participant under this subtitle, the State will ensure that program agencies consult with each local labor organization representing employees in the area who are engaged in the same or similar work as the work that is proposed to be carried out by such program.

<< 42 USCA § 12544 >>

SEC. 124. FOCUS OF PROGRAMS.

(a) IN GENERAL.—Programs that receive assistance under this subtitle may carry out activities that—

(1) in the case of conservation corps programs, focus on—

(A) conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(B) urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(C) fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(D) road and trail maintenance and improvement;

(E) erosion, flood, drought, and storm damage assistance and controls;

(F) stream, lake, waterfront harbor, and port improvement;

(G) wetlands protection and pollution control;

(H) insect, disease, rodent, and fire prevention and control;

(I) the improvement of abandoned railroad beds and rights-of-way;

(J) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(K) reclamation and improvement of strip-mined land;

(L) forestry, nursery, and cultural operations; and

(M) making public facilities accessible to individuals with disabilities.

(2) in the case of human services corps programs, include participant service in—

(A) State, local, and regional governmental agencies;

(B) nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(C) law enforcement agencies, and penal and probation systems;

(D) private nonprofit organizations that primarily focus on social service such as community action agencies;

(E) activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(F) any other nonpartisan civic activities and services that the Commission determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

(3) encompass the focuses and services described in both paragraphs (1) and (2).

(b) INELIGIBLE SERVICE CATEGORIES.—To be eligible to receive assistance under this subtitle, the activities conducted through programs referred to in subsection (a) shall not be conducted by any—

(1) business organized for profit;

(2) labor union;

(3) partisan political organization;

(4) organization engaged in religious activities, unless such activities do not involve the use of funds provided under this title by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(5) domestic or personal service company or organization.

(c) LIMITATION ON SERVICE.—No participant shall perform services in any project for more than a 6–month period. No participant shall remain enrolled in projects assisted under this subtitle for more than 24 months.

<< 42 USCA § 12545 >>

SEC. 125. RELATED PROGRAMS.

An activity administered under the authority of the Secretary of Health and Human Services, that is operated for the same purpose as a program eligible to be carried out under this subtitle, is encouraged to use services available under this subtitle.

<< 42 USCA § 12546 >>

SEC. 126. PUBLIC LANDS OR INDIAN LANDS.

(a) LIMITATION.—To be eligible to receive assistance through a grant provided under this subtitle, a program shall carry out activities on public lands or Indian lands, or result in a public benefit.
(b) REVIEW OF APPLICATIONS.—In reviewing applications submitted under section 123 that propose programs or projects to be carried out on public lands or Indian lands, the Commission shall consult with the Secretary of the Interior.
(c) CONSISTENCY.—A program carried out with assistance provided under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with—
(1) the provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law; and
(2) all management, operational, and other plans and documents that govern the administration of such lands.
(d) PARTICIPATION BY OTHER CONSERVATION PROGRAMS.—Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part to carry out its program.

<< 42 USCA § 12547 >>

SEC. 127. TRAINING AND EDUCATION SERVICES.

(a) ASSESSMENT OF SKILLS.—Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.
(b) ENHANCEMENT OF SKILLS.—Each program agency shall, through the programs and activities administered under this subtitle, enhance the educational skills of participants.
(c) PROVISION OF PRE–SERVICE AND IN–SERVICE TRAINING AND EDUCATION.—
(1) REQUIREMENT.—Each program agency shall use not less than 10 percent of the assistance made available to such agency under this subtitle in each fiscal year to provide pre-service and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.
(2) AGREEMENTS FOR ACADEMIC STUDY.—A program agency may enter into arrangements with academic institutions or education providers, including—
(A) local education agencies;
(B) community colleges;
(C) 4–year colleges;
(D) area vocational-technical schools; and
(E) community based organizations;

to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills.

(3) COUNSELING.—Career and educational guidance and counseling shall be provided to a participant during a period of in-service training as described in this subsection. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate.

(4) PRIORITY FOR PARTICIPANTS WITHOUT HIGH SCHOOL DIPLOMAS.—A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this subsection.

(d) STANDARDS AND PROCEDURES.—

(1) CONSISTENCY WITH STATE AND LOCAL REQUIREMENTS.—Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection (c) are consistent with the requirements of applicable State and local law and regulations.

(2) ACADEMIC STANDARDS.—The standards and procedures described in paragraph (1) shall provide that an individual serving in a program that receives assistance under this subtitle—

(A) who is not a high school graduate, participate in an educational curriculum so that such individual can earn a high school diploma or the equivalent of such diploma; and

(B) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

<< 42 USCA § 12548 >>

SEC. 128. AMOUNT OF AWARD; MATCHING REQUIREMENT.

(a) AMOUNT OF AWARD.—In determining the amount of a grant to be awarded to an applicant under this subtitle, the Commission shall consider—

(1) the number of participants to be served;

(2) the youth unemployment rate in the State; and

(3) the type of project or service proposed to be carried out with the assistance provided under this subtitle.

(b) MATCHING REQUIREMENT.—

(1) FEDERAL SHARE.—The Federal share of the cost of activities for which a grant is made to a State or local applicant under this subtitle shall not exceed 75 percent of the total cost of such activities.

(2) DEMONSTRATION OF EFFECTIVENESS.—In addition to the matching requirement in paragraph (1), the State or local applicant shall demonstrate to the satisfaction of the Commission that the effectiveness of the project will be enhanced by the use of Federal funds.

<< 42 USCA § 12549 >>

SEC. 129. PREFERENCE FOR CERTAIN PROJECTS.

(a) IN GENERAL.—In the consideration of applications submitted under section 123, the Commission shall give preference to programs that—

(1) will provide long-term benefits to the public;

(2) will instill a work ethic and a sense of public service in the participants;

(3) will be labor intensive, and involve youth operating in crews;

(4) can be planned and initiated promptly; and

(5) will enhance skills development and educational level and opportunities for the participants.

(b) SPECIAL RULE.—In the consideration of applications under this subtitle the Commission shall ensure the equitable treatment of both urban and rural areas.

<< 42 USCA § 12550 >>

SEC. 130. AGE AND CITIZENSHIP CRITERIA FOR ENROLLMENT.

(a) AGE AND CITIZENSHIP.—Enrollment in programs that receive assistance under this subtitle shall be limited to individuals who, at the time of enrollment, are—

(1) not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 15 years nor more than 21 years of age at the time of the enrollment of such individuals; and

(2) citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(b) PARTICIPATION OF DISADVANTAGED YOUTH.—Programs that receive assistance under this subtitle shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities and homeless youth, are offered opportunities to enroll.

(c) SPECIAL CORPS MEMBERS.—Notwithstanding subsection (a)(1), program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this Act. Programs are encouraged to consider senior citizens as special corps members.

(d) JOINT PROJECTS WITH SENIOR CITIZENS ORGANIZATIONS.—Program agencies shall use not more than 2 percent of amounts received under this subtitle to conduct joint projects with senior citizens organizations to enable senior citizens to serve as mentors for youth participants.

(e) CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit any program agency from limiting enrollment to any age subgroup within the range specified in subsection (a)(1).

<< 42 USCA § 12551 >>

SEC. 131. USE OF VOLUNTEERS.

Program agencies may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services under this section shall be subject to the condition that such use does not result in the displacement of any participant.

<< 42 USCA § 12552 >>

SEC. 132. POST–SERVICE BENEFITS.

The program agency shall provide post-service education and training benefits (such as scholarships and grants) for each participant in an amount that is not in excess of $100 per week, or in excess of $5,000 per year, whichever is less.

<< 42 USCA § 12553 >>

SEC. 133. LIVING ALLOWANCE.

(a) FULL–TIME SERVICE.—

(1) IN GENERAL.—From assistance provided under this subtitle, each participant in a full-time youth corps program that receives assistance under this subtitle shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

(2) NON–FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.

(b) REDUCTION IN EXISTING PROGRAM BENEFITS.—

(1) IN GENERAL.—Nothing in this section shall be construed to require a program in existence on the date of enactment of this Act to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

(2) FAIR LABOR STANDARDS ACT OF 1938.—For purposes of the Fair Labor Standards Act of 1938, residential youth corps programs under this subtitle will be considered an organized camp.

(c) HEALTH INSURANCE.—In addition to the living allowance provided under subsection (a), program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

(d) FACILITIES, SERVICES, AND SUPPLIES.—

(1) IN GENERAL.—The program agency may deduct, from amounts provided under subsections (a) and (c) to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants.

(2) EVALUATION.—The program agency shall establish the amount of the deductions and rates under paragraph (1) after evaluating the costs of providing such room and board to the participant.

(3) DUTIES OF PROGRAM AGENCY.—A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(4) OTHER FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may provide services, facilities, supplies, and equipment, including any surplus food and equipment available from other Federal programs, to any program agency carrying out projects under this subtitle.

(B) SECRETARY OF DEFENSE.—Whenever possible, the Commission shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment.

(5) HEALTH AND SAFETY STANDARDS.—The Commission and program agencies shall establish standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

<< 42 USCA § 12554 >>

SEC. 134. JOINT PROGRAMS.

(a) DEVELOPMENT.—The Commission may develop, in cooperation with the heads of other Federal agencies, regulations designed to permit, where appropriate, joint programs in which activities supported with assistance made available under this subtitle are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies (including the Job Training Partnership Act (29 U.S.C. 1501 et seq.)).

(b) STANDARDS.—Regulations promulgated under subsection (a) shall establish standards for the approval of joint programs that meet both the purposes of this title and the purposes of such statutes under which assistance is made available to support such projects.

(c) OPERATION OF MANAGEMENT AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(d) COORDINATION.—The Commission and program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

<< 42 USCA § 12555 >>

SEC. 135. FEDERAL AND STATE EMPLOYEE STATUS.

(a) IN GENERAL.—Participants and crew leaders shall be responsible to, or be the responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) NON–FEDERAL EMPLOYEES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, a participant or crew leader in a program that receives assistance under this subtitle shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(2) WORK–RELATED INJURY.—For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, a participant or crew leader serving in a program that receives assistance under this subtitle shall be considered an employee of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty", as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated.

(3) TORT CLAIMS PROCEDURE.—For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, a participant or crew leaders assigned to a youth corps program for which a grant has been made to the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term "employee of the government" as defined in section 2671 of such title.

(4) ALLOWANCE FOR QUARTERS.—For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term "employee" as defined in paragraph (3) of subsection (a) of such section.

(c) AVAILABILITY OF APPROPRIATION.—Contract authority under this subtitle shall be subject to the availability of appropriations. Assistance made available under this subtitle shall only be used for activities that are in addition to those which would otherwise be carried out in the area in the absence of such funds.

<< 42 USCA § 12556 >>

SEC. 136. REGULATIONS AND ASSISTANCE.

(a) IN GENERAL.—Before the end of the 120–day period beginning on the date of the enactment of this Act, the Commission shall promulgate regulations necessary to implement the program established by this subtitle.

(b) NOTICE AND COMMENT.—

(1) IN GENERAL.—Prior to the end of the 30–day period beginning on the date of the enactment of this Act, the Commission shall establish procedures to provide program agencies and other interested parties (including the general public) with adequate notice and an opportunity to comment on and participate in the formulation of regulations promulgated under subsection (a).

(2) REPORTING.—The regulations promulgated under subsection (a) shall include provisions to assure uniform reporting on—

(A) the activities and accomplishments of Youth Corps programs;

(B) the demographic characteristics of participants in the Youth Corps; and

(C) such other information as may be necessary to prepare the annual report required by section 172.

Subtitle D—National and Community Service

<< 42 USCA § 12501 NOTE >>

SEC. 140. SHORT TITLE.

This subtitle may be cited as the "National and Community Service Act".

<< 42 USCA § 12571 >>

SEC. 141. GENERAL AUTHORITY.

The Commission may make grants under section 102 to States for the creation of full- and part-time national and community service programs.

<< 42 USCA § 12572 >>

SEC. 142. GRANTS.

(a) CRITERIA FOR RECEIVING APPLICATIONS.—In determining whether to award a grant to a State under section 141, the Commission shall consider—

(1) the ability of the proposed program of such State to serve as an effective model for a large-scale national service program;

(2) the quality of the application of such State, including the plan of such State for training, recruitment, placement, and data collection;

(3) the extent that the proposed program builds on existing programs; and

(4) the expediency with which the State proposes to make the program operational.

(b) DIVERSITY.—The Commission shall ensure that programs receiving assistance under this subtitle are geographically diverse and include programs in both urban and rural States.

(c) TRAINING AND SKILLS.—The Commission shall ensure that some of the programs funded under this subtitle enroll individuals who have completed undergraduate education or specialized post-secondary training and whose training and skills enable them to provide needed services in the State.

(d) COMPOSITION OF PROGRAMS.—The Commission shall ensure that not less than 25 percent of the programs that receive assistance under this subtitle include full-time, part-time and special senior service participants.

(e) DESIGN OF PROGRAMS.—States shall design programs, consistent with the provisions of this Act, that meet the unique needs of the State, which may include programs that limit the type of service participants may perform or limit the age of participants to a narrower age subgroup.

(f) STATE APPLICATION FOR GRANT.—To receive a grant under section 141, a State shall prepare and submit, to the Commission, an application at such time, in such manner, and containing such information as the Commission may reasonably require, including—

(1) a description of the State administrative plan for the implementation of a program with assistance provided under this subtitle, including such functions, if any, that will be carried out by public and private nonprofit organizations pursuant to a grant or contract;

(2) a description of the manner in which an ethnically and economically diverse group of participants, including economically and educationally disadvantaged individuals, college-bound youth, individuals with disabilities, youth in foster care who are becoming too old for foster care, and employed individuals, shall be recruited and selected for participation in a program receiving assistance under this subtitle;

(3) a description of the procedures for training supervisors and participants and for supervising and organizing participants in such program;

(4) a description of the procedures to ensure that the program provides participants with an opportunity to reflect on their service experience;

(5) a description of the geographical areas within such State in which the program would be operated to provide the optimum match between the need for services and the anticipated supply of participants;

(6) a description of the plan for placing such participants in teams or making individual placements in such program;

(7) assurances that, prior to such placement, the State will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(8) assurances that, prior to such placement, such State will consult with employees at the proposed project site who are engaged in the same or similar work as that proposed to be carried out by such program;

(9) a description of the anticipated number of full- and part-time participants and special senior service members in such program;

(10) a plan for the recruitment and selection of sponsoring organizations that will receive participants under programs that receive assistance under this subtitle;

(11) a description of the procedures for matching such participants with such sponsoring organizations;

(12) a description of the procedures to be used to assure that sponsoring organizations that are not matched with participants shall be provided with information concerning the VISTA program and the programs established under title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001 et seq.);

(13) the State budget for the program;

(14) a plan for evaluating the program and assurances that such State will fully cooperate with any evaluation undertaken by the Commission pursuant to section 178; and

(15) any other information as the Commission may reasonably require.

(g) NUMBER OF STATES.—

(1) IN GENERAL.—The Commission shall ensure that not more than five States are authorized to operate full-time programs and not more than five States are authorized to operate part-time programs in fiscal year 1991 under this subtitle.

(2) SINGLE PROGRAM.—For purposes of paragraph (1), a State operating a single national service program with both full- and part-time options shall be counted as a State operating a full-time program and a State operating a part-time program.

(3) COOPERATIVE ARRANGEMENT.—For purposes of paragraph (1), a State operating a national service program involving a cooperative arrangement with a multi-State organization or with sites in more than one State shall be counted as a single State.

(4) AUTHORIZED PROGRAMS IN FISCAL YEAR 1991.—The Commission shall ensure that not more than eight States are authorized to operate programs in fiscal year 1991 under this subtitle.

(h) INDIAN TRIBES.—An Indian tribe shall be treated the same as a State for purposes of making grants under this subtitle.

<< 42 USCA § 12573 >>

SEC. 143. TYPES OF NATIONAL SERVICE.

A participant in a program that receives assistance under this subtitle shall perform national service to meet unmet educational, human, environmental, and public safety needs, especially those needs relating to poverty.

<< 42 USCA § 12574 >>

SEC. 144. TERMS OF SERVICE.

(a) LENGTH OF SERVICE.—

(1) PART–TIME.—An individual performing part-time national service under this subtitle shall agree to perform community service for not less than 3 years.

(2) FULL–TIME.—An individual performing full-time national service under this subtitle shall agree to perform community service for not less than 1 year nor more than 2 years, at the discretion of such individual.

(3) SPECIAL SENIOR SERVICE.—A special senior service participant performing national service under this subtitle shall serve for a period of time as determined by the Commission.

(b) PARTIAL COMPLETION OF SERVICE.—If the State releases a participant from completing a term of service in a program receiving assistance under this subtitle for compelling personal circumstances as demonstrated by such participant, the Commission may provide such participant with that portion of the financial assistance described in section 146 that corresponds to the quantity of the service obligation completed by such individual.

(c) TERMS OF SERVICE.—

(1) PART–TIME.—A participant performing part-time national service under this subtitle shall serve for—

(A) 2 weekends each month and 2 weeks during the year; or

(B) an average of 9 hours per week each year of service.

(2) FULL–TIME.—A participant performing full-time national service under this subtitle shall serve for not less than 40 hours per week each year of service.

(3) SPECIAL SENIOR SERVICE.—A special senior service participant performing national service under this subtitle shall serve either part- or full-time as permitted by the Commission.

<< 42 USCA § 12575 >>

SEC. 145. ELIGIBILITY.

(a) PART–TIME.—

(1) REQUIREMENTS.—An individual may serve in a part-time national service program under this subtitle if such individual —

(A) is 17 years of age or older; and

(B) is a citizen of the United States or lawfully admitted for permanent residence.

(2) PRIORITY.—In selecting applicants for a part-time program, States shall give priority to applicants who are currently employed.

(b) FULL–TIME.—An individual may serve in a full-time national service program under this subtitle if such individual—

(1) is 17 years of age or older;

(2) has received a high school diploma or the equivalent of such diploma, or agrees to achieve a high school diploma or the equivalent of such diploma while participating in the program; and

(3) is a citizen of the United States or lawfully admitted for permanent residence.

(c) SPECIAL SENIOR SERVICE.—An individual may serve as a special senior service member under this subtitle if such individual—

(1) is 60 years of age or older; and

(2) meets the eligibility criteria for special senior service membership established by the Commission.

<< 42 USCA § 12576 >>

SEC. 146. POST–SERVICE BENEFITS.

(a) PART–TIME.—

(1) FEDERAL SHARE.—The Commission shall annually provide to each part-time participant a nontransferrable post-service benefit that is equal in value to $1,000 for each year of service that such participant provides to the program.

(2) STATE SHARE.—

(A) IN GENERAL.—The State shall annually provide to each part-time participant a nontransferrable post-service benefit that is equal in value to $1,000 for each year of service that such participant provides to the program.

(B) WAIVER.—A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition and required fees at 4–year public institutions of higher education within such State.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent a State from using funds made available from non-Federal sources to increase the amount of post-service benefits provided under paragraph (1) to an amount in excess of that described in such paragraph.

(b) FULL–TIME.—

(1) FEDERAL SHARE.—The Commission shall annually provide to each full-time participant a nontransferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program.

(2) STATE SHARE.—

(A) IN GENERAL.—The State shall annually provide to each full-time participant a nontransferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program.

(B) WAIVER.—A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition, required fees, and room and board costs at 4–year public institutions of higher education within such State.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent a State from using funds made available from non-Federal sources to increase the amount of post-service benefits provided under paragraph (1) to an amount in excess of that described in such paragraph.

(c) SPECIAL SENIOR SERVICE PARTICIPANT.—A special senior service participant shall be ineligible to receive post-service benefits under this section.

(d) INDEXING.—The Commission shall increase the value of post-service benefits provided under this section in each fiscal year based on the increase in the costs associated with attending a 4–year institution of higher education during that fiscal year. The Commission shall determine such increases in costs based on information made available by the Bureau of Labor Statistics and the National Center for Education Statistics.

(e) POST–SERVICE BENEFIT.—

(1) PART–TIME.—A post-service benefit provided under subsection (a) shall only be used for—

(A) payment of a student loan from Federal or non-Federal sources;

(B) downpayment or closing costs associated with purchasing a first home; or

(C) tuition at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

(2) FULL–TIME.—A post-service provided under subsection (b) shall only be used for—

(A) payment of a student loan from Federal or non-Federal sources; or

(B) tuition, room and board, books and fees, and other costs associated with attendance (pursuant to section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087***ll***)) at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

<< 42 USCA § 12577 >>

SEC. 147. LIVING ALLOWANCE.

(a) FULL–TIME SERVICE.—

(1) IN GENERAL.—From assistance provided under this subtitle, each participant in a full-time national service program receiving assistance under this subtitle shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

(2) NON–FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.

(b) REDUCTION IN EXISTING PROGRAM BENEFITS.—Nothing in this section shall be construed to require a program in existence on the date of enactment of this Act to decrease any stipends, salaries, or living allowances provided to participants under such program.

(c) HEALTH INSURANCE.—In addition to the living allowance provided under subsection (a), grantees are encouraged to provide health insurance to each participant in a full-time national service program who does not otherwise have access to health insurance.

(d) SPECIAL SENIOR SERVICE PARTICIPANT.—

(1) FULL–TIME.—Each full-time special senior service participant shall receive a living allowance equal to the living allowance provided to full-time participants under subsection (a), and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

(2) PART–TIME.—Each part-time special senior service participant shall receive a living allowance equal to a share of such allowance offered to a full-time special senior service participant under paragraph (1), that has been prorated according to the number of hours such part-time participant serves in the program, and such other assistance that the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

<< 42 USCA § 12578 >>

SEC. 148. TRAINING.

(a) PROGRAM TRAINING.—

(1) IN GENERAL.—Each participant shall receive 3 weeks of training provided by the Commission in cooperation with the State.

(2) CONTENTS OF TRAINING SESSION.—Each training session described in paragraph (1) shall—

(A) orient each participant in the nature, philosophy, and purpose of the program;

(B) build an ethic of community service; and

(C) train each participant to effectively perform the assigned program task of such participant by providing—

(i) general training in citizenship and civic and community service; and

(ii) if feasible, specialized training for the type of service that each participant will perform.

(b) ADDITIONAL TRAINING.—Each State may provide additional training for participants as such State determines necessary.

(c) AGENCY OR ORGANIZATION TRAINING.—Each participant shall receive training from the sponsoring organization in skills relevant to the work to be conducted.

(d) ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES.—In accordance with the nondiscrimination provisions of section 175, each training program shall provide reasonable accommodations for individuals with disabilities.

<< 42 USCA § 12579 >>

SEC. 149. PUBLIC–PRIVATE PARTNERSHIP.

The Commission shall consider and develop opportunities for cooperation between public and private entities in the funding and implementation of a program receiving assistance under this subtitle, including cost-sharing arrangements with sponsoring organizations.

<< 42 USCA § 12580 >>

SEC. 150. IN–SERVICE EDUCATION BENEFITS.

Each State that receives assistance under this subtitle shall provide to each participant enrolled in a full-time program in-service educational services and materials to enable such participant to obtain a high school diploma or the equivalent of such diploma.

Subtitle E—Innovative and Demonstration Programs and Projects

PART I—LIMITATION ON GRANTS

<< 42 USCA § 12591 >>

SEC. 155. LIMITATION ON GRANTS.

The Commission shall make grants for not fewer than three programs authorized in this subtitle.

PART II—GOVERNORS' INNOVATIVE SERVICE PROGRAMS

<< 42 USCA § 12601 >>

SEC. 156. GENERAL AUTHORITY.

The Commission may make grants under section 102 to States or Indians tribes for the creation of innovative volunteer and community service programs.

<< 42 USCA § 12602 >>

SEC. 157. GRANTS.

(a) CRITERIA FOR RECEIVING APPLICATIONS.—In determining whether to award a grant under section 156, the Commission shall consider—

(1) the ability of the proposed program to serve as an effective model;

(2) the quality of the application submitted for the grant;

(3) the extent to which the proposed program builds on existing programs; and

(4) the degree to which the program responds to human, educational, environmental and public safety needs in an innovative manner.

(b) AUTHORIZED ACTIVITIES.—Grants under this part may be used for—

(1) enhancing volunteer and community service programs;

(2) demonstration programs;

(3) research concerning, assessment of, and evaluation of service programs;

(4) coordination of service programs;

(5) technical assistance;

(6) training and staff development; and

(7) collection and dissemination of information concerning service programs.

(c) APPLICATION FOR GRANT.—To receive a grant under this part, a State or Indian tribe shall prepare and submit to the Commission, an application at such time, in such manner, and containing such information as the Commission may reasonably require, including—

(1) a description of the proposed program to be established with assistance provided under the grant;

(2) a description of the human, educational, environmental or public safety service that participants will perform and the State or community need that will be addressed under such proposed program;

(3) a description of the target population of participants and how they will be recruited;

(4) a description of the procedure for training supervisors and participants and for supervising and organizing participants in such proposed program;

(5) a description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(6) a description of the budget for the program;

(7) assurances that, prior to the placement of a participant in the program, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such project; and

(8) assurances that, prior to the placement of a participant in a program, the applicant will consult with employees at the proposed program site who are engaged in the same or similar work as that proposed to be carried out by such program.

PART III—PEACE CORPS

<< 42 USCA § 12611 >>

SEC. 160. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Commission is authorized to make grants to the Director of the Peace Corps or the Director of ACTION to carry out training and educational benefits demonstration programs in accordance with this part.

(b) CONTRACT AUTHORITY.—The Director of the Peace Corps and the Director of ACTION are authorized, either directly or by way of grant, contract, or other arrangement, to carry out the provisions of this part. The authority to enter into contracts under this part shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

<< 42 USCA § 12612 >>

SEC. 161. ELIGIBILITY AND SELECTION PROCEDURES.

(a) ELIGIBILITY.—Any individual who—

(1) has completed at least 2 years of satisfactory study at an institution of higher education, is enrolled in an educational program of at least 4 years at an institution of higher education for which such institution awards a bachelor's degree, and will complete such program within 2 years;

(2) enters into an agreement with the Director of the Peace Corps or the Director of ACTION to serve at least 3 years as a volunteer in the Peace Corps or in VISTA; and

(3) is selected pursuant to the competitive process established under subsection (b);

is eligible to participate in the demonstration program authorized by this part.

(b) SELECTION PROCEDURES.—The Director of the Peace Corps and the Director of ACTION shall each establish uniform criteria for the selection on a competitive basis of individuals to participate in the training programs established under section 162 and to receive educational benefits under section 163. The selection procedures established under this section shall be designed to provide for the awarding of grants for benefits only to students from groups traditionally underrepresented in the Peace Corps or VISTA and to students who will specialize in courses of instruction for which there is a special need in the Peace Corps or VISTA. Not more than 50 individuals shall be selected to participate in the training programs established under section 162.

<< 42 USCA § 12613 >>

SEC. 162. TRAINING PROGRAM.

The Director of the Peace Corps and the Director of ACTION shall each establish and carry out a training program under which each individual selected under section 161(b), as part of the course of study which the individual is pursuing at the institution of higher education of such individual, receives appropriate training in skills that such individual will employ in the Peace Corps or VISTA.

<< 42 USCA § 12614 >>

SEC. 163. EDUCATIONAL BENEFITS.

(a) BENEFITS PROVIDED.—Each individual who has been selected under section 161(b) shall be eligible to receive educational benefits in an amount that the Director of the Peace Corps or the Director of ACTION finds reasonable and appropriate, but that shall not exceed the costs of tuition, room and board, books, and fees that the individual incurs in attending the institution of higher education of such individual during the remaining 2 years of the educational program in which the individual is enrolled.

(b) FORM OF BENEFITS.—The educational benefits provided to an individual under subsection (a) shall be in the form of grants, remissions of expenses, or such other form as the Director of the Peace Corps or the Director of ACTION considers appropriate.

(c) REPAYMENT OF BENEFITS.—An individual provided benefits under subsection (a) shall repay the amount of the benefits so provided, plus interest not to exceed that permitted under section 427A of the Higher Education Act of 1965 (20 U.S.C. 1077a)—

(1) if the individual fails to complete the educational program of such individual within the 2–year period specified in section 161(a)(1), or

(2) if the individual fails to serve 3 years as a volunteer in the Peace Corps or VISTA upon completing the educational program of such individual.

The Director of the Peace Corps or the Director of ACTION may waive the repayment requirement if exceptional circumstances, such as illness or death, prevent an individual from meeting such 2–year or 3–year requirement.

(d) COLLECTION BY SECRETARY OF EDUCATION.—The Secretary of Education shall have the authority to collect amounts owed by an individual under subsection (c). The Secretary may, for the purpose of collecting such amounts, exercise the authorities conferred on the Secretary by sections 467 and 468 of the Higher Education Act of 1965 (20 U.S.C. 1087gg and 1087hh) with respect to the collection of defaulted loans under part E of title IV of that Act. Amounts collected under this subsection shall be deposited in the general fund of the Treasury.

<< 42 USCA § 12615 >>

SEC. 164. EVALUATION AND REPORT.

The General Accounting Office shall conduct an evaluation of any program authorized by this part and shall prepare and submit to the President and the appropriate committees of Congress—

(1) not later than October 31, 1993, an interim report on such evaluation; and
(2) not later than October 31, 1995, a final report on such evaluation, together with such recommendations, including recommendations for legislation, as the Director of the Peace Corps, the Director of ACTION, and the Secretary consider appropriate.

PART IV—OTHER VOLUNTEER PROGRAMS

<< 42 USCA § 12621 >>

SEC. 165. RURAL YOUTH SERVICE DEMONSTRATION PROJECT.

The Commission is authorized, in accordance with this subtitle, to make grants and enter into contracts under section 102 for the establishment of demonstration projects in rural areas. Such projects may include volunteer service involving the elderly and assisted-living services performed by students, school dropouts, and out-of-school youth.

<< 42 USCA § 12622 >>

SEC. 166. ASSISTANCE FOR HEAD START.

The Commission, in consultation with the Director of ACTION, is authorized to make grants under section 102 to grantees under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act) for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs.

<< 42 USCA § 12623 >>

SEC. 167. EMPLOYER–BASED RETIREE VOLUNTEER PROGRAMS.

The Commission is authorized to make grants under section 102 to public and private nonprofit organizations for the purpose of bringing together retirees, their former employers, and community agencies to develop employer-based retiree volunteer programs.

Subtitle F—Administrative Provisions

<< 42 USCA § 12631 >>

SEC. 171. LIMITATION ON NUMBER OF GRANTS.

(a) IN GENERAL.—The Commission shall not award more than one grant during each fiscal year to each State under section 102.
(b) NUMBER OF APPLICATIONS.—In submitting applications for a grant under section 102, a State shall consolidate all of the applications of such State for the conduct of programs under subtitles B through E, into a single application that meets the requirements of such subtitles.
(c) MULTIPLE USE.—A grant awarded under section 102 to a State may be used by the State in accordance with the applications consolidated, submitted, and approved under subtitles B through E.

<< 42 USCA § 12632 >>

SEC. 172. REPORTS.

(a) STATE REPORTS.—
(1) IN GENERAL.—Each State receiving assistance under this title shall prepare and submit, to the Commission, an annual report concerning the use of assistance provided under this title and the status of the national and community service programs that receive assistance under such title in such State.

(2) LOCAL GRANTEES.—Each State may require local grantees that receive assistance under this title to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (1), including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(3) REPORT DEMONSTRATING COMPLIANCE.—

(A) IN GENERAL.—Each State receiving assistance under this title shall include information in the report required under paragraph (1) that demonstrates the compliance of the State with the provisions of this Act, including sections 177 and 113(9).

(B) LOCAL GRANTEES.—Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (1).

(4) AVAILABILITY OF REPORT.—Reports submitted under paragraph (1) shall be made available to the public on request.

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 120 days after the end of each fiscal year, the Commission shall prepare and submit, to the appropriate authorizing and appropriation Committees of Congress, a report concerning the programs that receive assistance under this title.

(2) CONTENT.—Reports submitted under paragraph (1) shall contain a summary of the information contained in the State reports submitted under subsection (a), and shall reflect the findings and actions taken as a result of any evaluation conducted by the Commission.

<< 42 USCA § 12633 >>

SEC. 173. SUPPLEMENTATION.

(a) IN GENERAL.—Assistance provided under this title shall be used to supplement the level of State and local public funds expended for services of the type assisted under this title in the previous fiscal year.

(b) AGGREGATE EXPENDITURE.—Subsection (a) shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this title.

<< 42 USCA § 12634 >>

SEC. 174. PROHIBITION ON USE OF FUNDS.

(a) PROHIBITED USES.—No assistance made available under a grant under this title shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) POLITICAL ACTIVITY.—Assistance provided under this title shall not be used by program participants and program staff to—

(1) assist, promote, or deter union organizing; or

(2) finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) CONTRACTS OR COLLECTIVE BARGAINING AGREEMENTS.—A program that receives assistance under this title shall not impair existing contracts for services or collective bargaining agreements.

<< 42 USCA § 12635 >>

SEC. 175. NONDISCRIMINATION.

(a) IN GENERAL.—An individual with responsibility for the operation of a project that receives assistance under this title shall not discriminate against a participant or member of the staff of such project on the basis of race, color, national origin, sex, age, disability, or political affiliation of such member.

(b) FEDERAL FINANCIAL ASSISTANCE.—Any assistance provided under this title shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the regulations issued under such Acts.

(c) RELIGIOUS DISCRIMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this title shall not discriminate on the basis of religion against a participant or a member of the project staff who is paid with funds received under this title.

(2) EXCEPTION.—Paragraph (1) shall not apply to the employment, with assistance provided under this title, of any member of the staff of a project that receives assistance under this title who was employed with the organization operating the project on the date the grant under this title was awarded.

(d) RULES AND REGULATIONS.—The Commission shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

<< 42 USCA § 12636 >>

SEC. 176. NOTICE, HEARING, AND GRIEVANCE PROCEDURES.

(a) IN GENERAL.—

(1) SUSPENSION OF PAYMENTS.—The Commission may in accordance with the provisions of this title, suspend or terminate payments under a contract or grant providing assistance under this title whenever the Commission determines there is a material failure to comply with this title or the applicable terms and conditions of any such grant or contract issued pursuant to this title.

(2) PROCEDURES TO ENSURE ASSISTANCE.—The Commission shall prescribe procedures to ensure that—

(A) assistance provided under this title shall not be suspended for failure to comply with the applicable terms and conditions of this title except, in emergency situations, a suspension may be granted for 30 days; and

(B) assistance provided under this title shall not be terminated for failure to comply with applicable terms and conditions of this title unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) HEARINGS.—Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this title.

(c) TRANSCRIPT OR RECORDING.—A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) STATE LEGISLATION.—Nothing in this title shall be construed to preclude the enactment of State legislation providing for the implementation, consistent with this title, of the programs administered under this title.

(e) CONSTRUCTION.—Nothing in this title shall be construed to link performance of service with receipt of Federal student financial assistance.

(f) GRIEVANCE PROCEDURE—

(1) IN GENERAL.—State and local applicants that receive assistance under this title shall establish and maintain a procedure to adjudicate grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this title, including grievances regarding proposed placements of such participants in such projects.

(2) DEADLINE FOR GRIEVANCES.—Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence.

(3) DEADLINE FOR HEARING AND DECISION.—

(A) HEARING.—A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days of filing such grievance.

(B) DECISION.—A decision on any grievance shall be made not later than 60 days after the filing of such grievance.

(4) ARBITRATION.—

(A) IN GENERAL.—On the occurrence of an adverse grievance decision, or 60 days after the filing of such grievance if no decision has been reached, the party filing the grievance shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(B) DEADLINE FOR PROCEEDING.—An arbitration proceeding shall be held not later than 45 days after the request for such arbitration.

(C) DEADLINE FOR DECISION.—A decision concerning such grievance shall be made not later than 30 days after the date of such arbitration proceeding.

(D) COST.—The cost of such arbitration proceeding shall be divided evenly between the parties to the arbitration.

(5) PROPOSED PLACEMENT.—If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this title, such placement shall not be made unless it is consistent with the resolution of the grievance pursuant to this subsection.

(6) REMEDIES.—Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this title;

(B) termination of such payments; and

(C) prohibition of such placement described in paragraph (5).

<< 42 USCA § 12637 >>

SEC. 177. NONDUPLICATION AND NONDISPLACEMENT.

(a) NONDUPLICATION.—

(1) IN GENERAL.—Assistance provided under this title shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) PRIVATE NONPROFIT ENTITY.—Assistance made available under this title shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) are met.

(b) NONDISPLACEMENT.—

(1) IN GENERAL.—An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this title.

(2) SERVICE OPPORTUNITIES.—A service opportunity shall not be created under this title that will infringe in any manner on the promotional opportunity of an employed individual.

(3) LIMITATION ON SERVICES.—

(A) DUPLICATION OF SERVICES.—A participant in a program receiving assistance under this title shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(B) SUPPLANTATION OF HIRING.—A participant in any program receiving assistance under this title shall not perform any services or duties or engage in activities that will supplant the hiring of employed workers.

(C) DUTIES FORMERLY PERFORMED BY ANOTHER EMPLOYEE.—A participant in any program receiving assistance under this title shall not perform services or duties that have been performed by or were assigned to any—

(i) presently employed worker;

(ii) employee who recently resigned or was discharged;

(iii) employee who is subject to a reduction in force;

(iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) employee who is on strike or who is being locked out.

(c) LABOR MARKET INFORMATION.—The Secretary of Labor shall make available to the Commission and to any program agency under this title such labor market information as is appropriate for use in carrying out the purposes of this title.

(d) TREATMENT OF BENEFITS.—Section 142(b) of the Job Training Partnership Act shall apply to the projects conducted under this title as such projects were conducted under the Job Training Partnership Act.

(e) STANDARDS OF CONDUCT.—Programs that receive assistance under this title shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

<< 42 USCA § 12638 >>

SEC. 178. STATE ADVISORY BOARD.

(a) FORMATION OF BOARD.—Each State that applies for assistance under this title is encouraged to establish a State Advisory Board for National and Community Service.

(b) MEMBERS.—

(1) IN GENERAL.—The chief executive officer of a State referred to in subsection (a) shall appoint members to such Advisory Board from among—

(A) representatives of State agencies administering community service, youth service, education, social service, senior service, and job training programs; and

(B) representatives of labor, business, agencies working with youth, community-based organizations such as community action agencies, students, teachers, Older American Volunteer Programs as established under title II of the Domestic Volunteer Act of 1973 (42 U.S.C. 5001 et seq.), full-time youth service corps programs, school-based community service programs, higher education institutions, local educational agencies, volunteer public safety organizations, educational partnership programs, and other organizations working with volunteers.

(2) BALANCE OF MEMBERSHIP.—To the extent practicable, the chief executive officer of a State referred to in subsection (a) shall ensure that the membership of the Advisory Board is balanced according to race, ethnicity, age, and gender.

(c) DUTIES OF BOARD.—A State Advisory Board for National and Community Service established under subsection (a) shall assist the State agency administering a program receiving assistance under this title in—

(1) coordinating programs that receive assistance under this title and related programs within the State;

(2) disseminating information concerning service programs that receive assistance under this title;

(3) recruiting participants for programs that receive assistance under this title; and

(4) developing programs, training methods, curriculum materials, and other materials and activities related to programs that receive assistance under this title.

<< 42 USCA § 12639 >>

SEC. 179. EVALUATION.

(a) IN GENERAL.—The Commission shall provide, through grants or contracts, for the continuing evaluation of programs that receive assistance under this title, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of various program models in achieving stated goals and the costs associated with such;

(2) for purposes of the reports required by subsection (h), the impact of such programs, in each State in which a program is conducted, on the ability of—

(A) the VISTA and older American volunteer programs (established under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 4950 et seq.));

(B) each regular component of the Armed Forces (as defined in section 101(4) of title 10, United States Code);

(C) each of the reserve components of the Armed Forces (as described in section 216(a) of title 5, United States Code); and

(D) the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.));

to recruit individuals residing in such State to serve in such program; and

(3) the structure and mechanisms for delivery of services for such programs.

(b) COMPARISONS.—The Commission shall provide for inclusion in the evaluations required under subsection (a), where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

(c) CONDUCTING EVALUATIONS.—Evaluations of programs under subsection (a) shall be conducted by individuals who are not directly involved in the administration of such program.

(d) STANDARDS.—The Secretary shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of this title.

(e) COMMUNITY PARTICIPATION.—In evaluating a program receiving assistance under this title, the Commission shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

(f) COMPARISON OF PROGRAM MODELS.—The Commission shall evaluate and compare the effectiveness of different program models in meeting the program objectives described in subsection (g) including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative voucher options, and programs utilizing individual placements and teams.

(g) PROGRAM OBJECTIVES.—The Commission shall ensure that programs that receive assistance under subtitle D are evaluated to determine their effectiveness in—

(1) recruiting and enrolling diverse participants in such programs, consistent with the requirements of section 145, based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) promoting the educational achievement of each participant in such programs, based on earning a high school diploma or the equivalent of such diploma and the future enrollment and completion of increasingly higher levels of education;

(3) encouraging each participant to engage in public and community service after completion of the program based on career choices and service in other service programs such as the Volunteers in Service to America Program and older American volunteer programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), the military, and part-time volunteer service;

(4) promoting of positive attitudes among each participant regarding the role of such participant in solving community problems based on the view of such participant regarding the personal capacity of such participant to improve the lives of others, the responsibilities of such participant as a citizen and community member, and other factors;

(5) enabling each participant to finance a lesser portion of the higher education of such participant through student loans;

(6) providing services and projects that benefit the community;

(7) supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can effectively be utilized;

(8) providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), and the VISTA and older American volunteer programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(h) OBTAINING INFORMATION.—

(1) IN GENERAL.—In conducting the evaluations required under subsection (g), the Commission may require each program participant and State or local applicant to provide such information as may be necessary to carry out the requirements of this section.

(2) CONFIDENTIALITY.—The Commission shall keep information acquired under this section confidential.

(i) DEADLINE.—The Commission shall complete the evaluations required under subsection (g) not later than 30 months after the date of enactment of this Act.

(j) REPORT.—Not later than 24 months after the date on which the first program is initiated under this title, the Commission shall prepare and submit, to the appropriate Committees of Congress, a report containing the results of the evaluations conducted under subsection (a)(2) with respect to the first 18 months after such initiation date.

<< 42 USCA § 12640 >>

SEC. 180. ENGAGEMENT OF PARTICIPANTS.

A State shall not engage a participant to serve in any program that receives assistance under this title unless and until amounts have been appropriated under section 501 for the provision of post-service benefits and for the payment of other necessary expenses and costs associated with such participant.

<< 42 USCA § 12641 >>

SEC. 181. NATIONAL SERVICE DEMONSTRATION PROGRAM AMENDMENTS.

(a) TREATMENT OF EDUCATION AND HOUSING BENEFITS.—For purposes of determining eligibility for programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) (hereafter in this section referred to as the "Act"), post-service benefits received under this Act shall be considered as estimated financial assistance as defined in section 428(a)(2)(C)(i) of title IV of the Act (20 U.S.C. 1078(a)(2)(C)(i)), except that in no case shall such a post-service benefit be considered as—

(1) annual adjusted family income as defined in section 411F(1) of subpart 1 of part A of title IV of such Act (20 U.S.C. 1070a–6); or

(2) total income as defined in section 480(a) of part F of title IV of such Act (20 U.S.C. 1087vv(a)).

(b) TREATMENT OF STIPEND FOR LIVING EXPENSES.—In no case shall living allowances received under this Act be considered in the determination of expected family contribution or independent student status under—

(1) subpart 1 of part A of title IV of such Act (20 U.S.C. 1070a et seq.); or

(2) part F of title IV of such Act (20 U.S.C. 1087kk et seq.).

(c) CONTINGENT EXTENSION.—Section 414 of the General Education Provisions Act (20 U.S.C. 1226a) shall apply to this Act.

<< 42 USCA § 12642 >>

SEC. 182. PARTNERSHIPS WITH SCHOOLS.

(a) DESIGN OF PROGRAMS.—The head of each Federal agency and department shall design and implement a comprehensive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include—

(1) a review of existing programs to identify and expand the opportunities for such employees to be adult volunteers in schools and for students and out-of-school youth;

(2) the designation of a senior official in each such agency and department who will be responsible for establishing adult volunteer and partnership and youth service programs in each such agency and department and for developing adult volunteer and partnership and youth service programs;

(3) the encouragement of employees of such agencies and departments to participate in adult volunteer and partnership programs and other service projects;

(4) the annual recognition of outstanding service programs operated by Federal agencies; and

(5) the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, and on a regular basis thereafter, the head of each Federal agency and department shall prepare and submit, to the appropriate Committees of Congress, a report concerning the implementation of this section.

<< 42 USCA § 12643 >>

SEC. 183. SERVICE AS TUTORS.

Notwithstanding any other provision of this Act, a service opportunity through which a part-time participant serves as a classroom tutor under the supervision of a certified professional shall be considered an acceptable placement if the requirements of section 177(b)(1) and (2) and section 174 are met.

<< 42 USCA § 12644 >>

SEC. 184. DRUG–FREE WORKPLACE REQUIREMENTS.

All programs receiving grants under this title shall be subject to the Drug–Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti–Drug Abuse Act of 1988 (41 U.S.C. 702–707).

SEC. 185. CONFORMING AMENDMENTS.

The Higher Education Act of 1965 is amended—

<< 20 USCA § 1070a–6 >>

(1) in section 411F(9) (20 U.S.C. 1070a–6(9)), by adding at the end thereof the following new subparagraph:
"(F) Annual adjusted family income does not include any living allowance received by a participant in programs established under the National and Community Service Act of 1990.";
(2) in section 411F(12)(B)(vi) (20 U.S.C. 1070a–6(12)(B)(vi)), by striking "(including all sources of resources other than parents)" and inserting "(including all sources of resources other than parents and living allowances received as a result of participation in a program established under the National and Community Service Act of 1990.)";

<< 20 USCA § 1087vv >>

(3) in section 480(f) (20 U.S.C. 1087vv(f), by—
(A) striking "and" at the end of paragraph (1);
(B) by striking the period at the end of paragraph (2) and inserting a semicolon and "and"; and
(C) adding at the end thereof the following new paragraph:
"(3) any living allowance received by a participant in a program established under the National and Community Service Act of 1990."; and
(4) in section 480(d)(2)(F) (20 U.S.C. 1087vv(d)(2)(F)), by inserting after "other than parents" "and living allowances as a result of participation in a program established under the National and Community Service Act of 1990)".

Subtitle G—Commission on National and Community Service

<< 42 USCA § 12651 >>

SEC. 190. COMMISSION ON NATIONAL AND COMMUNITY SERVICE.

(a) ESTABLISHMENT.—There is established a Commission on National and Community Service that shall administer the programs established under this title.
(b) BOARD OF DIRECTORS.—
(1) COMPOSITION.—
(A) IN GENERAL.—The Commission shall be administered by a Board of Directors (hereinafter referred to in this section as the "Board") that shall be composed of 21 members, to be appointed by the President with the advice and consent of the Senate, who shall be individuals who have extensive experience in volunteer and service opportunity programs and who represent a broad range of viewpoints. The membership of the Board shall be balanced according to the race, ethnicity age and gender of its members.
(B) EX–OFFICIO MEMBERS.—The Secretary of Education, Secretary of Health and Human Services, Secretary of Labor, Secretary of Interior, Secretary of Agriculture, and the Director of the ACTION agency shall serve as ex-officio members of the Board.
(2) POLITICAL PARTIES.—Not more than 11 members of the Board shall belong to the same political party.
(3) NOMINATIONS.—Seven members of the Board shall be appointed from among individuals nominated by the Speaker of the House of Representatives, and seven of such members shall be appointed from among individuals nominated by the majority leader of the Senate.
(4) TERMS.—Each member of the Board shall serve for a term of 2 years, except that, subject to the provisions of paragraph (4), 11 of the initial members of the Board shall serve for a term of 1 year, as designated by the President.

(5) VACANCIES.—As vacancies occur on the Board, new members shall be appointed by the President, with the advice and consent of the Senate, and serve for the remainder of the term for which the predecessor of such member was appointed.

(6) CHAIRPERSON.—The Board shall elect a chairperson and vice-chairperson from among its membership.

(7) MEETINGS.—The Board shall meet not less than three times each year. The Board shall hold additional meetings if seven members of the Board request such meetings in writing. A majority of the Board shall constitute a quorum.

(8) EXPENSES.—While away from their homes or regular places of business on the business of the Board, members of such Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(c) DUTIES.—The Board shall—

(1) advise the President and the Congress concerning developments in national and community service that merit the attention of the President and the Congress;

(2) design, administer and disseminate information regarding the programs and initiatives established under this title;

(3) consult with appropriate Federal agencies in administering programs that receive assistance under this title;

(4) have the authority to delegate authority to administer the programs established under this title to any other agency or entity of the Federal Government, on the agreement of such agency or entity, as the Board determines appropriate;

(5) provide, directly or through contract with public or private nonprofit organizations that have extensive experience in service programs, training and technical assistance to States, school and community-based service programs, full-time youth service corps, and national service demonstration programs;

(6) arrange for the evaluation of programs established under this title, in accordance with section 179;

(7) coordinate with the Secretary of Defense in evaluating the effect of the national service demonstration program on the recruitment efforts of the active and reserve components of the Armed Forces; and

(8) carry out any other activities determined appropriate by the Secretary.

(d) EXECUTIVE DIRECTOR OF THE BOARD.—

(1) IN GENERAL.—The Board shall appoint an individual to serve as Executive Director of the Board (hereinafter referred to in this section as the "Director").

(2) DUTIES.—The Director shall advise the Board concerning developments in volunteer or national service that the Director determines merits the attention of the Board, identify promising service initiatives, and coordinate the work of the Board with the work of other Federal agencies involved in service activities and in the design of a competitive grant to provide assistance as authorized under this title.

(e) TECHNICAL EMPLOYEES.—The Director may, at the discretion of the Board, appoint not more than 10 technical employees to administer the Committee. Such employees shall be appointed for terms that shall not exceed 2 years, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(f) CLEARINGHOUSES.—

(1) IN GENERAL.—The Commission shall provide assistance to not more than four regional service clearinghouses.

(2) PUBLIC AND PRIVATE NONPROFIT AGENCIES.—Public and private nonprofit agencies that have extensive experience in community service, adult volunteer and partnership programs, youth service, intergenerational service programs, and programs working with at-risk youth shall be eligible to receive assistance under paragraph (1).

(3) FUNCTION OF CLEARINGHOUSES.—National and regional clearinghouses that receive assistance under paragraph (1) shall—

(A) assist State and local community service programs with needs assessments and planning;

(B) conduct research and evaluations concerning community service;

(C) provide leadership development and training to State and local community service program administrators, supervisors, and participants;

(D) administer award and recognition programs for outstanding community service programs and participants;

(E) facilitate communication among community service programs and participants;

(F) provide information, curriculum materials, technical assistance on program planning and operation, and training to States and local entities eligible to receive funds under this title;

(G) gather and disseminate information on successful programs, components of successful programs, innovative youth skills curriculum, and projects being implemented nationwide; and

(H) make recommendations to State and local entities on quality controls to improve program delivery and on changes in the programs under this title.

(g) PRESIDENTIAL AWARDS FOR SERVICES.—

(1) PRESIDENTIAL AWARDS.—

(A) IN GENERAL.—The President, acting through the Commission, is authorized to make Presidential Awards for service to—

(i) individuals demonstrating outstanding community service including school-based service;

(ii) outstanding service learning and community service programs; and

(iii) outstanding teachers in service-learning programs.

(B) NUMBER OF AWARDS.—The President is authorized to make one or more individual, one or more teaching, and one or more program awards in each Congressional district, and one or more Statewide individual program and teaching awards in each State.

(C) CONSULTATION.—The President shall consult with the Governor of each State, and with the Board, in the selection of individuals and programs for Presidential Awards.

(D) PARTICIPANTS IN PROGRAMS.—An individual receiving an award under this subsection need not be a participant in a program assisted under this title.

(2) INFORMATION.—The President shall ensure that information concerning individuals and programs receiving awards under this subsection is widely disseminated.

(h) REPORT.—Not later than January 1, 1993, the President shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives, a report containing recommendations for the improvement of the administration and coordination of volunteer, national, and community service programs administered by the ACTION Agency, the Commission on National Service, and other Federal entities. Such report shall include—

(1) an assessment of whether Federal volunteer, national and community service programs could be more cost effectively and efficiently administered by a single Federal entity or fewer entities, including an estimate of any cost savings that could be achieved by consolidating or centralizing the management of such programs; and

(2) a description of the roles and responsibilities of the ACTION Agency, the Commission on National Service and other Federal entities in developing and coordinating National policy on voluntarism and national and community service and any recommendations for clarifying or altering the missions and responsibilities of such entities which may be appropriate.

TITLE II—MODIFICATIONS OF EXISTING PROGRAMS

Subtitle B—Publication

<< 20 USCA § 1092 >>

SEC. 201. INFORMATION FOR STUDENTS.

Section 485(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(a)(1)) is amended—

(1) by striking out “and” at the end of subparagraph (J);

(2) by striking out the period at the end of subparagraph (K) and inserting in lieu thereof a semicolon and the word “and”; and

(3) by adding at the end thereof the following new subparagraph:

“(L) the terms and conditions under which students receiving guaranteed student loans under part B of this title or direct student loans under part E of this title, or both, may—

“(i) obtain deferral of the repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) or under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service, and

"(ii) obtain partial cancellation of the student loan for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or, for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.".

<< 20 USCA § 1092 >>

SEC. 202. EXIT COUNSELING FOR BORROWERS.

Section 485(b) of the Higher Education Act of 1965 (20 U.S.C. 1092(b)) is amended—
(1) by striking "and" at the end of paragraph (1);
(2) by striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon and "and"; and
(3) by inserting after paragraph (2) the following new paragraph:
"(3) the terms and conditions under which the student may obtain partial cancellation or defer repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) or under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness.".

<< 20 USCA § 1092 >>

SEC. 203. DEPARTMENT INFORMATION ON DEFERMENTS AND CANCELLATIONS.

Section 485(d) of the Higher Education Act of 1965 (20 U.S.C. 1092(d)) is amended by inserting before the last sentence the following new sentence: "The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization".

<< 20 USCA § 1092b >>

SEC. 204. DATA ON DEFERMENTS AND CANCELLATIONS.

Section 485B(a) of the Higher Education Act of 1965 (20 U.S.C. 1092b(a)) is amended—
(1) by striking "and" at the end of paragraph (3);
(2) by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and "and"; and
(3) by adding the following new paragraph after paragraph (4):
"(5) the exact amount of loans partially or totally canceled or in deferment for service under the Peace Corps Act (22 U.S.C. 2501 et seq.)), for service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), and for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness.".

Subtitle B—Youthbuild Projects

SEC. 211. YOUTHBUILD PROJECTS.

The Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VII—YOUTHBUILD PROJECTS

<< 42 USCA § 5091 >>

"SEC. 701. STATEMENT OF PURPOSE.

"It is the purpose of this title—

"(1) to provide economically disadvantaged young adults with opportunities for meaningful service to their communities in helping to meet the housing needs of homeless individuals and low-income families; and

"(2) to enable economically disadvantaged young adults to obtain the education and employment skills necessary to achieve economic self-sufficiency.

<< 42 USCA § 5091a >>

"SEC. 702. AUTHORIZATION OF PROGRAM.

"(a) FINANCIAL ASSISTANCE.—The Director of the ACTION Agency, in consultation with the Secretary of Labor, may provide grants to pay the Federal share of the cost of carrying out Youthbuild projects in accordance with this title.

"(b) FEDERAL SHARE.—The Federal share under subsection (a) for each fiscal year shall not exceed 90 percent.

<< 42 USCA § 5091b >>

"SEC. 703. SERVICE IN CONSTRUCTION AND REHABILITATION PROJECTS.

"(a) CONSTRUCTION AND REHABILITATION PROJECTS.—Eligible participants serving in Youthbuild projects receiving assistance under this title shall be employed in the construction, rehabilitation, or improvement of real property to be used for purposes of providing—

"(1) residential rental housing that is occupied primarily by, or available for occupancy primarily by, homeless individuals and low-income families;

"(2) transitional housing for homeless individuals;

"(3) facilities for the provision of health, education, and other social services to low-income families, including—

"(A) senior citizen centers;

"(B) youth recreation centers;

"(C) Head Start or child or adult day care centers; and

"(D) community health centers.

"(b) REQUIREMENTS FOR COMMUNITY FACILITIES.—No assistance may be provided under this title to support the construction, rehabilitation, or improvement of real property to be used to provide facilities described in subsection (a) unless the property—

"(1) is used principally by or for the benefit of low-income families;

"(2) is owned and occupied solely by public or private non-profit entities; and

"(3) is located in census tracts, or identifiable neighborhoods within census tracts, in which the median family income is not more than 80 percent of the median family income of the area in which the facility is located, as such median family income and area are determined for the purposes of assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"(c) RESTRICTION OF USE.—Participants under this title may not be employed in the construction, operation, or maintenance of any facility used for sectarian instruction or religious worship.

<< 42 USCA § 5091c >>

"SEC. 704. EDUCATION AND JOB TRAINING SERVICES.

"(a) IN GENERAL.—Assistance provided under this title shall be used by each Youthbuild project to provide to participants the following:

"(1) SERVICE OPPORTUNITIES.—Service opportunities in the construction or rehabilitation projects described in section 703, which shall be integrated with appropriate skills training and coordinated with, to the extent feasible, preapprenticeship and apprenticeship programs.

"(2) EDUCATIONAL SERVICES.—Services and activities designed to meet the educational needs of participants, including —

"(A) basic skills instruction and remedial education;

"(B) bilingual education for individuals with limited English proficiency; and

"(C) secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent.

"(3) PERSONAL AND PEER SUPPORTS.—Counseling services and other activities designed to—

"(A) ensure that participants overcome personal problems that would interfere with their successful participation; and

"(B) develop a strong, mutually supportive peer context in which values, goals, cultural heritage, and life skills can be explored and strengthened.

"(4) LEADERSHIP DEVELOPMENT.—Opportunities to develop the decisionmaking, speaking, negotiating, and other leadership skills of participants, such as the establishment and operation of a youth council with meaningful decisionmaking authority over aspects of the project.

"(5) PREPARATION FOR AND PLACEMENT IN UNSUBSIDIZED EMPLOYMENT.—Activities designed to maximize the value of participants as future employees and to prepare participants for seeking, obtaining, and retaining unsubsidized employment.

"(6) NECESSARY SUPPORT SERVICES.—To provide support services and need-based stipends necessary to enable individuals to participate in the program and, for a period not to exceed 6 months after completion of training, to assist participants through support services in retaining employment.

"(b) CONDITIONS.—The provision of service opportunities to participants in Youthbuild projects shall be made conditional upon attendance and participation by such individuals in the educational services and activities described in subsection (a). The duration of participation for each individual in educational services and activities shall be at least equal to the total number of hours for which a participant serves and is paid wages by a Youthbuild project.

<< 42 USCA § 5091d >>

"SEC. 705. USES OF FUNDS.

"(a) FUNDS.—Funds provided under this title may be used only for activities that are in addition to activities that would otherwise be available in the absence of such funds.

"(b) ASSISTANCE CRITERIA.—Assistance provided to each Youthbuild project under this title shall be used only for—

"(1) education and job training services and activities described in paragraphs (2), (3), (4), (5), and (6) of section 704(a);

"(2) wages and benefits paid to participants in accordance with sections 704(a) and 706; and

"(3) administrative expenses incurred by the project in an amount not to exceed 10 percent of the amount of assistance provided to the project under this title unless such project receives a waiver, on the basis of substantial need, granted by the Director to use an amount not to exceed 15 percent of the amount of such assistance provided under this title for such purposes.

<< 42 USCA § 5091e >>

"SEC. 706. ELIGIBLE PARTICIPANTS.

"(a) IN GENERAL.—Except as provided in subsection (b), an individual shall be eligible to participate in a Youthbuild project receiving assistance under this title if such individual is—

"(1) 16 to 24 years of age, inclusive;

"(2) economically disadvantaged; and

"(3) an individual who has dropped out of high school whose reading and mathematics skills are at or below the 8th grade level.

"(b) EXCEPTIONS.—Not more than 25 percent of the participants in a Youthbuild project receiving assistance under this title may be individuals who do not meet the requirements of subsection (a).

"(c) PARTICIPATION LIMITATION.—Any eligible individual selected for full-time participation in a Youthbuild project may participate full-time for a period of not less than 6 months and not more than 18 months.

<< 42 USCA § 5091f >>

"SEC. 707. LIVING ALLOWANCES.

"(a) AMOUNT OF ALLOWANCE.—

"(1) IN GENERAL.—Each participant in a full-time Youthbuild program that receives assistance under this title shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 673(2) of the Community Service Block Grant Act (42 U.S.C. 9902(2)).

"(2) NON–FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.

"(3) REDUCTION IN EXISTING PROGRAM BENEFITS.—Nothing in this section shall be construed to require a program in existence on the date of enactment of this title to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipend, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

"(b) NONDISCRIMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an individual with responsibility for the operation of a Youthbuild project shall not discriminate on the basis of religion against a participant or a member of the project staff who is paid with funds under this title.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the employment, with funds provided under this title, of any member of the staff of a Youthbuild project who was employed with the organization operating the project on the date the grant funded under this title was awarded.

<< 42 USCA § 5091g >>

"SEC. 708. CONTRACTS.

"Each Youthbuild project shall carry out the services and activities under this title directly or through arrangements or under contracts with administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act (29 U.S.C. 1501(b)(1)(B)), with State and local educational agencies, institutions of higher education, State and local housing development agencies, and with other public agencies and private organizations.

<< 42 USCA § 5091h >>

"SEC. 709. PERFORMANCE STANDARDS.

"(a) IN GENERAL.—The Director, in consultation with the Secretary of Labor, shall prescribe standards for evaluating the performance of Youthbuild projects receiving assistance under this title, including the following factors:

"(1) Placement in unsubsidized employment.

"(2) Retention in unsubsidized employment.

"(3) An increase in earnings.

"(4) Improvement of reading and other basic skills.

"(5) Attainment of a high school diploma or its equivalent.

"(6) Completion of projects providing a benefit to the community.

"(b) VARIATIONS.—The Director shall prescribe variations to the standards determined under subsection (a) by taking into account the economic conditions of the areas in which Youthbuild projects are located and appropriate special characteristics, such as the extent of English language proficiency and offender status of Youthbuild participants.

<< 42 USCA § 5091i >>

"SEC. 710. APPLICATIONS.

"(a) SUBMISSION.—To apply for a grant under this title, an eligible entity shall submit an application to the Director in accordance with procedures established by the Director.

"(b) CRITERIA.—Each such application shall—

"(1) describe the educational services, job training, supportive services, service opportunities, and other services and activities that will be provided to participants;

"(2) describe the proposed construction of rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

"(3) describe the manner in which eligible youths will be recruited and selected, including a description of arrangements which will be made with community-based organizations, State and local educational agencies, public assistance agencies, the courts of jurisdiction for status and youth offenders, homeless shelters and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

"(4) describe the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children);

"(5) describe how the proposed project will be coordinated with other Federal, State, and local activities, including vocational, adult and bilingual education programs, job training supported by funds available under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and the Family Support Act of 1988, housing and economic development, and programs that receive assistance under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306);

"(6) provide assurances that there will be a sufficient number of supervisory personnel on the project and that the supervisory personnel are trained in the skills needed to carry out the project;

"(7) describe activities that will be undertaken to develop the leadership skills of participants;

"(8) set forth a detailed budget and describe the system of fiscal controls and auditing and accountability procedures that will be used to ensure fiscal soundness; and

"(9) set forth assurances, arrangements, and conditions the Director determines are necessary to carry out this title.

<< 42 USCA § 5091j >>

"SEC. 711. SELECTION OF PROJECTS.

"In approving applications for assistance under this title, the Director shall give priority to applicants that demonstrate the following:

"(1) POTENTIAL FOR SUCCESS.—The greatest likelihood of success, as indicated by such factors as the past experience of an applicant with housing rehabilitation or construction, youth and youth education and employment training programs, management capacity, fiscal reliability, and community support.

"(2) NEED.—Have the greatest need for assistance, as determined by factors such as—

"(A) the degree of economic distress of the community from which participants would be recruited, including—

"(i) the extent of poverty;

"(ii) the extent of youth unemployment; and

"(iii) the number of individuals who have dropped out of high school; and

"(B) the degree of economic distress of the locality in which the housing would be rehabilitated or constructed, including—

"(i) objective measures of the incidence of homelessness;

"(ii) the relation between the supply of affordable housing for low-income families and the number of such families in the locality;

"(iii) the extent of housing overcrowding; and

"(iv) the extent of poverty.

<< 42 USCA § 5091k >>

"SEC. 712. MANAGEMENT AND TECHNICAL ASSISTANCE.

"(a) GENERAL ADMINISTRATION.—The program established under this title shall be administered by an individual with significant experience in the administration of youth service programs that explicitly attempt to enhance the basic academic and vocational skills of participants in such programs. The Director is authorized to delegate any of the functions of the Director under this title as may be appropriate to the Secretary of Labor and provide for the performance of any of the provisions of this title on a cost-reimbursable basis by the Secretary of Labor.

"(b) DIRECTOR ASSISTANCE.—The Director may enter into contracts with a qualified public or private nonprofit agency to provide assistance to the Director in the management, supervision, and coordination of Youthbuild projects receiving assistance under this title.

"(c) SPONSOR ASSISTANCE.—The Director shall enter into contracts with a qualified public or private nonprofit agency to provide appropriate training, information, and technical assistance to sponsors of projects assisted under this title.

"(d) APPLICATION PREPARATION.—Technical assistance may also be provided in the development of project proposals and the preparation of applications for assistance under this title to eligible entities which intend or desire to submit such applications. Community-based organizations shall be given first priority in the provision of such assistance.

"(e) RESERVATION OF FUNDS.—The Director shall reserve 5 percent of the amounts available in each fiscal year under section 715 to carry out subsections (c) and (d).

<< 42 USCA § 5091*l* >>

"SEC. 713. DEFINITIONS.

"For purposes of this title:

"(1) COMMUNITY–BASED ORGANIZATIONS.—The term 'community-based organizations' has the meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

"(2) DIRECTOR.—The term 'Director' means the Director of the ACTION agency.

"(3) DROPPED OUT OF HIGH SCHOOL.—The term 'individual who has dropped out of high school' means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma, but does not include any individual who has attended secondary school at any time during the preceding 6 months.

"(4) ECONOMICALLY DISADVANTAGED.—The term 'economically disadvantaged' has the meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

"(5) ELIGIBLE ENTITY.—The term 'eligible entity' means a public or private nonprofit agency, such as—

"(A) community-based organizations;

"(B) administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act (29 U.S.C. 1501(b)(1)(B));

"(C) community action agencies;

"(D) State and local housing development agencies;

"(E) State and local youth service and conservation corps; and

"(F) any other entity that is eligible to provide education and employment training under other Federal employment training programs.

"(6) HOMELESS INDIVIDUAL.—The term 'homeless individual' has the meaning given such term in section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302).

"(7) HOUSING DEVELOPMENT AGENCY.—The term 'housing development agency' means any agency of a State or local government, or any private nonprofit organization that is engaged in providing housing for the homeless or low-income families.

"(8) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"(9) LIMITED ENGLISH PROFICIENCY.—The term 'limited English proficiency' has the meaning given such term in section 7003 of the Bilingual Education Act (20 U.S.C. 3223).

"(10) LOW–INCOME FAMILY.—The term 'low-income family' has the meaning given the term 'lower income families' in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)).

"(11) OFFENDER.—The term 'offender' means any adult or juvenile with a record of arrest or conviction for a criminal offense.

"(12) QUALIFIED NONPROFIT AGENCY.—The term 'qualified public or private nonprofit agency' means any nonprofit agency that has significant prior experience in the operation of projects similar to the Youthbuild program authorized under this title and that has the capacity to provide effective technical assistance under this title.

"(13) RESIDENTIAL RENTAL PURPOSES.—The term 'residential rental purposes' includes a cooperative or mutual housing facility that has a resale structure that enables the cooperative to maintain affordability for low-income individuals and families.

"(14) SERVICE OPPORTUNITY.—The term 'service opportunity' means the opportunity to perform work in return for wages and benefits in the construction or rehabilitation of real property in accordance with this title.

"(15) STATE.—The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

"(16) TRANSITIONAL HOUSING.—The term 'transitional housing' means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within a reasonable amount of time. Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

"(17) YOUTHBUILD PROJECT.—The term 'Youthbuild project' means any project that receives assistance under this title and provides disadvantaged youth with opportunities for service, education, and training in the construction or rehabilitation of housing for homeless and other low-income individuals.

<< 42 USCA § 5091m >>

"SEC. 715. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this title.

<< 42 USCA § 5091n >>

"SEC. 716. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title $1,000,000 for fiscal year 1991, $2,000,000 for fiscal year 1992, and $5,000,000 for fiscal year 1993.".

Subtitle C—Amendments to Student Literacy Corps

SEC. 221. AMENDMENTS TO STUDENT LITERACY CORPS.

<< 20 USCA § 1018c >>

(a) INCREASE IN HOURS OF SERVICE.—Section 144(b)(2)(B) of the Higher Education Act of 1965 (20 U.S.C. 1018 note) is amended by striking "6" and inserting in lieu thereof "60" and by striking "each week of" and inserting in lieu thereof "during".

(b) PRIORITY.—Section 144(b)(2)(D) of such Act is amended by inserting before the semicolon the following: "and, as provided in section 146, will give priority in providing tutoring services to—

"(i) educationally disadvantaged students receiving services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and

"(ii) illiterate parents of educationally or economically disadvantaged elementary school students, with special emphasis on single-parent households.".

<< 20 USCA § 1018e >>

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 146 of such Act is amended—

(1) by inserting "(a)" before "In general"; and

(2) by adding at the end thereof the following new subsection:

"(b) The priorities described in section 144(b)(2)(D) shall be applied by the Secretary to funds appropriated which exceed $10,000,000.".

TITLE III—POINTS OF LIGHT FOUNDATION

<< 42 USCA § 12501 NOTE >>

SEC. 301. SHORT TITLE.

This title may be cited as the "The Points of Light Foundation Act".

<< 42 USCA § 12661 >>

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—
(1) community service and service to others is an integral part of American tradition;
(2) existing volunteers and volunteer programs should be praised for their efforts in helping and serving others;
(3) the definition of a successful life includes service to others;
(4) individuals should be encouraged to volunteer their time and energies in community service efforts;
(5) if asked to volunteer or participate in community service, most Americans will do so;
(6) institutions should be encouraged to volunteer their resources and energies and should encourage volunteer and community service among their members, employees, affiliates; and
(7) volunteer and community service programs are intended to complement and not replace governmental responsibilities.
(b) PURPOSE.—It is the purpose of this title—
(1) to encourage every American and every American institution to help solve our most critical social problems by volunteering their time, energies and services through community service projects and initiatives;
(2) to identify successful and promising community service projects and initiatives, and to disseminate information concerning such projects and initiatives to other communities in order to promote their adoption nationwide; and
(3) to discover and encourage new leaders and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others.

<< 42 USCA § 12662 >>

SEC. 303. AUTHORITY.

(a) IN GENERAL.—The President is authorized to designate a private, nonprofit organization (hereinafter referred to in this title as the Foundation) to receive funds pursuant to section 501(b), upon the determination of the President that such organization is capable of carrying out the undertakings described in section 302. Any such designation by the President shall be revocable.
(b) CONSTRUCTION.—Nothing in this Act shall be construed either—
(1) to cause the Foundation to be deemed an agency, establishment, or instrumentality of the United States Government; or
(2) to cause the directors, officers or employees of the Foundation to be deemed officers or employees of the United States.

<< 42 USCA § 12663 >>

SEC. 304. GRANTS TO THE FOUNDATION.

(a) IN GENERAL.—Funds made available pursuant to sections 303 and 501(b) shall be granted to the Foundation by a department or agency in the executive branch of the United States Government designated by the President—
(1) to assist the Foundation in carrying out the undertakings described in section 302; and
(2) for the administrative expenses of the Foundation.
(b) INTEREST EARNED ON ACCOUNTS.—Notwithstanding any other provision of law, the Foundation may hold funds granted to it pursuant to this title in interest-bearing accounts, prior to the disbursement of such funds for purposes specified in subsection (a), and may retain for such purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress.

<< 42 USCA § 12664 >>

SEC. 305. ELIGIBILITY OF THE FOUNDATION FOR GRANTS.

(a) COMPLIANCE.—Grants may be made to the Foundation pursuant to this title only if the Foundation agrees to comply with the requirements of this title. If the Foundation fails to comply with the requirements of this title, additional funds shall not be released until the Foundation brings itself into compliance with such requirements.

(b) ACTIVITIES.—The Foundation may use funds provided under this title only for activities and programs consistent with the purposes described in sections 302 and 304.

(c) LIMITATION.—The Foundation shall not issue any shares of stock or declare or pay any dividends.

(d) COMPENSATION.—No part of the funds available to the Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses. Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(e) CONFLICTS OF INTEREST.—No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation that affects his or her financial interests or the financial interests of any corporation, partnership, entity, or organization in which he or she has a direct or indirect financial interest.

(f) POLITICAL ACTIVITY.—The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation, and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(g) PRIVATE SECTOR CONTRIBUTIONS.—During the second and third fiscal years in which funds are provided to the Foundation under this title, the Foundation shall raise from private sector donations an amount equal to not less than 25 percent of any funds provided to the Foundation under this title in such fiscal year. Funds shall be released to the Foundation during such fiscal year only to the extent that the matching requirement of the subsection has been met.

(h) AUDIT OF ACCOUNTS.—The accounts of the Foundation shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. The reports, of each such independent audit shall be included in the annual report required by subsection (1).

(i) AUDITS BY AGENCIES.—In fiscal years in which the Foundation is receiving grants under this title, the accounts of the Foundation may be audited at any time by any agency designated by the President. The Foundation shall keep such records as will facilitate effective audits.

(j) CONGRESSIONAL OVERSIGHT.—In fiscal years in which the Foundation is receiving grants under this title, the Foundation shall be subject to appropriate oversight procedures of Congress.

(k) DUTIES.—The Foundation shall ensure—

(1) that recipients of financial assistance provided by the Foundation under this title, shall keep separate accounts with respect to such assistance and such records as may be reasonably necessary to disclose fully—

(A) the amount and the disposition by such recipient of the assistance received from the Foundation;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(D) such other records as will facilitate effective audits; and

(2) that the Foundation, or any of its duly authorized representatives including any agency designated by the President pursuant to subsection (i) shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided from funds granted pursuant to this title.

(l) ANNUAL REPORTS.—The Foundation shall prepare and submit to the President and to the appropriate Committees of Congress an annual report, that shall include a comprehensive and detailed description of the Foundation's operations, activities, financial condition, and accomplishments for the fiscal year preceding the year in which the report is submitted. Such report shall be submitted not later than 3 months after the conclusion of any fiscal year in which the Foundation receives grants under this title.

TITLE IV—FOOD DONATIONS

<< 42 USCA § 12671 >>

SEC. 401. SENSE OF CONGRESS CONCERNING ENACTMENT OF GOOD SAMARITAN FOOD DONATION ACT.

(a) IN GENERAL.—It is the sense of Congress that each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States should—

(1) encourage the donation of apparently wholesome food or grocery products to nonprofit organizations for distribution to needy individuals; and

(2) consider the model Good Samaritan Food Donation Act (provided in section 402) as a means of encouraging the donation of food and grocery products.

(b) DISTRIBUTION OF COPIES.—The Archivist of the United States shall distribute a copy of this title to the chief executive officer of each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

<< 42 USCA § 12672 >>

SEC. 402. MODEL GOOD SAMARITAN FOOD DONATION ACT.

(a) SHORT TITLE.—This section may be cited as the "Good Samaritan Food Donation Act".

(b) DEFINITIONS.—As used in this section:

(1) APPARENTLY FIT GROCERY PRODUCT.—The term "apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(2) APPARENTLY WHOLESOME FOOD.—The term "apparently wholesome food" means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(3) DONATE.—The term "donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(4) FOOD.—The term "food" means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) GLEANER.—The term "gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(6) GROCERY PRODUCT.—The term "grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(8) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(9) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means an incorporated or unincorporated entity that—

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(10) PERSON.—The term "person" means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

(c) LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS.—A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

(d) COLLECTION OR GLEANING OF DONATIONS.—A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) PARTIAL COMPLIANCE.—If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) CONSTRUCTION.—This section shall not be construed to create any liability.

<< 42 USCA § 12673 >>

SEC. 403. EFFECT OF SECTION 402.

The model Good Samaritan Food Donation Act (provided in section 402) is intended only to serve as a model law for enactment by the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States. The enactment of section 402 shall have no force or effect in law.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

<< 42 USCA § 12681 >>

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) TITLE I.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out title I, $56,000,000 for fiscal year 1991, $95,500,000 for fiscal year 1992, and $105,000,000 for fiscal year 1993.

(2) EARMARKS.—Of the aggregate amount appropriated under paragraph (1) for title I for each fiscal year—

(A) $2,000,000 shall be made available to carry out subtitle G of such title in each such fiscal year;

(B) not less than 30 percent shall be available to carry out subtitle B of such title in each such fiscal year;

(C) not less than 30 percent shall be available to carry out subtitle C of such title in each such fiscal year; and

(D) not less than 30 percent shall be available to carry out subtitle D of such title in each such fiscal year.

(b) TITLE III.—There are authorized to be appropriated to carry out title III, $5,000,000 for fiscal year 1991, $7,500,000 for fiscal year 1992, and $10,000,000 for fiscal year 1993.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. AMTRAK WASTE DISPOSAL.

<< 45 USCA § 546 >>

(a) AMENDMENT TO RAIL PASSENGER SERVICE ACT.—Section 306(i) of the Rail Passenger Service Act is amended—

(1) by inserting "and other Federal, State and local laws" after "Public Health Service Act (42 U.S.C. 264)"; and

(2) by adding at the end thereof the following new sentences: "New intercity rail passenger cars manufactured on or after October 15, 1990, shall be built to provide for the discharge or human wastes only at servicing facilities. The Corporation shall retrofit those of its intercity rail passenger cars that were manufactured after May 1, 1971 and before October 15, 1990, with human waste disposal systems that provide for the discharge of human wastes only at servicing facilities. Subject to the appropriation of funds, (1) such retrofit program shall be completed within not later than October 15, 1996, and (2) all cars that do not provide for the discharge of human wastes only at servicing facilities shall be removed from service after such date. The United States district courts shall have original jurisdiction over any civil actions brought by the Corporation to enforce the exemption conferred hereunder and may grant equitable or declaratory relief as requested by the Corporation.".

<< 45 USCA § 546 NOTE >>

(b) PLAN.—Not later than 1 year after the date of enactment of this Act, the National Railroad Passenger Corporation shall prepare and submit to the appropriate committees of Congress a plan that sets forth a schedule and projected cost for the completion of the retrofit program referred to in the amendment made by subsection (a) within the time limit set forth under such amendment.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on February 5, 1976.

(d) ENVIRONMENTALLY SENSITIVE AREAS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation, after appropriate notice and comment, and in consultation with the National Railroad Passenger Corporation, the Administrator of the Environmental Protection Agency, the Surgeon General, and State and local officials, shall promulgate such regulations as may be necessary to mitigate the impact of the discharge of human waste from railroad passenger cars on areas that may be considered environmentally sensitive.

(e) AVAILABILITY OF INFORMATION CONCERNING DISPOSAL OF WASTE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations directing the National Railroad Passenger Corporation to, where appropriate, publish printed information, and make public address announcements, explaining its existing disposal technology and the retrofit and new equipment program, and encouraging passengers using existing equipment not to dispose of wastes in stations, railroad yards, or while the train is moving through environmentally sensitive areas.

<< 22 USCA § 2452a >>

SEC. 602. EXCHANGE PROGRAM WITH COUNTRIES IN TRANSITION FROM TOTALITARIANISM TO DEMOCRACY.

(a) AUTHORIZATION OF ACTIVITIES; GRANTS OR CONTRACTS FOR EXCHANGES WITH FOREIGN COUNTRIES.—Pursuant to the Mutual Educational and Cultural Exchange Act of 1961 and using the authorities contained therein, the President is authorized, when the President considers that it would strengthen international cooperative relations, to provide, by grant, contract, or otherwise, for exchanges with countries that are in transition from totalitarianism to democracy, which include, but are not limited to Poland, Hungary, Czechoslovakia, Bulgaria, and Romania—

(1) by financing studies, research, instruction, and related activities—

(A) of or for American citizens and nationals in foreign countries; and

(B) of or for citizens and nationals of foreign countries in American private businesses, trade associations, unions, chambers of commerce, and local, State, and Federal Government agencies, located in or outside the United States; and

(2) by financing visits and interchanges between the United States and countries in transition from totalitarianism to democracy.

The program under this section shall be coordinated by the United States Information Agency.

(b) TRANSFER OF FUNDS.—The President is authorized to transfer to the appropriations account of the United States Information Agency such sums as the President shall determine to be necessary out of the travel accounts of the departments and agencies of the United States, except for the Department of State and the United States Information Agency, as the President shall designate. Such transfers shall be subject to the approval of the Committee on Appropriations of the House of Representatives

and the Committee on Appropriations of the Senate. In addition, the President is authorized to accept such gifts or cost-sharing arrangements as may be proffered to sustain the program under this section.

Approved November 16, 1990

PL 101–610, 1990 S 1430

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 1. General Provisions: Short Title, Effect of Code and Other Provisions (Refs & Annos)

40 ILCS 5/1-113.1

5/1-113.1. Investment authority of pension funds established under Article 3 or 4

Currentness

§ 1-113.1. Investment authority of pension funds established under Article 3 or 4. [1] The board of trustees of a police pension fund established under Article 3 of this Code or firefighter pension fund established under Article 4 of this Code shall draw pension funds from the treasurer of the municipality and, beginning January 1, 1998, invest any part thereof in the name of the board in the items listed in Sections 1-113.2 through 1-113.4 according to the limitations and requirements of this Article. These investments shall be made with the care, skill, prudence, and diligence that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims.

Interest and any other income from the investments shall be credited to the pension fund.

For the purposes of Sections 1-113.2 through 1-113.11, the “net assets” of a pension fund include both the cash and invested assets of the pension fund.

Credits
Laws 1963, p. 161, § 1-113.1, added by P.A. 90-507, § 4, eff. Aug. 22, 1997.

Footnotes

1 40 ILCS 5/3-101 et seq. or 5/4-101 et seq.

40 I.L.C.S. 5/1-113.1, IL ST CH 40 § 5/1-113.1
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 1. General Provisions: Short Title, Effect of Code and Other Provisions (Refs & Annos)

40 ILCS 5/1-113.4

5/1-113.4. List of additional permitted investments for pension funds with net assets of $5,000,000 or more

Effective: August 18, 2017
Currentness

§ 1-113.4. List of additional permitted investments for pension funds with net assets of $5,000,000 or more.

(a) In addition to the items in Sections 1-113.2 and 1-113.3, a pension fund established under Article 3 or 4 [1] that has net assets of at least $5,000,000 and has appointed an investment adviser under Section 1-113.5 may, through that investment adviser, invest a portion of its assets in common and preferred stocks authorized for investments of trust funds under the laws of the State of Illinois. The stocks must meet all of the following requirements:

(1) The common stocks are listed on a national securities exchange or board of trade (as defined in the federal Securities Exchange Act of 1934 and set forth in subdivision G of Section 3 of the Illinois Securities Law of 1953) [2] or quoted in the National Association of Securities Dealers Automated Quotation System National Market System (NASDAQ NMS).

(2) The securities are of a corporation created or existing under the laws of the United States or any state, district, or territory thereof and the corporation has been in existence for at least 5 years.

(3) The corporation has not been in arrears on payment of dividends on its preferred stock during the preceding 5 years.

(4) The market value of stock in any one corporation does not exceed 5% of the cash and invested assets of the pension fund, and the investments in the stock of any one corporation do not exceed 5% of the total outstanding stock of that corporation.

(5) The straight preferred stocks or convertible preferred stocks are issued or guaranteed by a corporation whose common stock qualifies for investment by the board.

(6) The issuer of the stocks has been subject to the requirements of Section 12 of the federal Securities Exchange Act of 1934 [3] and has been current with the filing requirements of Sections 13 and 14 of that Act [4] during the preceding 3 years.

(b) A pension fund's total investment in the items authorized under this Section and Section 1-113.3 shall not exceed 35% of the market value of the pension fund's net present assets stated in its most recent annual report on file with the Illinois Department of Insurance.

(c) A pension fund that invests funds under this Section shall electronically file with the Division any reports of its investment activities that the Division may require, at the times and in the format required by the Division.

Credits

Laws 1963, p. 161, § 1-113.4, added by P.A. 90-507, § 4, eff. Aug. 22, 1997. Amended by P.A. 100-201, § 240, eff. Aug. 18, 2017.

Notes of Decisions (1)

Footnotes

1 40 ILCS 5/3-101 et seq. or 5/4-101 et seq.

2 15 U.S.C.A. § 78a et seq. and 815 ILCS 5/3.

3 15 U.S.C.A. § 78*l*.

4 15 U.S.C.A. §§ 78m and 78n.

40 I.L.C.S. 5/1-113.4, IL ST CH 40 § 5/1-113.4
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 1. General Provisions: Short Title, Effect of Code and Other Provisions (Refs & Annos)

40 ILCS 5/1-113.5

5/1-113.5. Investment advisers and investment services for all Article 3 or 4 pension funds

Effective: April 3, 2009
Currentness

§ 1-113.5. Investment advisers and investment services for all Article 3 or 4 pension funds.

(a) The board of trustees of a pension fund may appoint investment advisers as defined in Section 1-101.4. The board of any pension fund investing in common or preferred stock under Section 1-113.4 shall appoint an investment adviser before making such investments.

The investment adviser shall be a fiduciary, as defined in Section 1-101.2, with respect to the pension fund and shall be one of the following:

(1) an investment adviser registered under the federal Investment Advisers Act of 1940 [1] and the Illinois Securities Law of 1953; [2]

(2) a bank or trust company authorized to conduct a trust business in Illinois;

(3) a life insurance company authorized to transact business in Illinois; or

(4) an investment company as defined and registered under the federal Investment Company Act of 1940 [3] and registered under the Illinois Securities Law of 1953.

(a-5) Notwithstanding any other provision of law, a person or entity that provides consulting services (referred to as a "consultant" in this Section) to a pension fund with respect to the selection of fiduciaries may not be awarded a contract to provide those consulting services that is more than 5 years in duration. No contract to provide such consulting services may be renewed or extended. At the end of the term of a contract, however, the contractor is eligible to compete for a new contract. No person shall attempt to avoid or contravene the restrictions of this subsection by any means. All offers from responsive offerors shall be accompanied by disclosure of the names and addresses of the following:

(1) The offeror.

(2) Any entity that is a parent of, or owns a controlling interest in, the offeror.

(3) Any entity that is a subsidiary of, or in which a controlling interest is owned by, the offeror.

Beginning on July 1, 2008, a person, other than a trustee or an employee of a pension fund or retirement system, may not act as a consultant under this Section unless that person is at least one of the following: (i) registered as an investment adviser under the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.); (ii) registered as an investment adviser under the Illinois Securities Law of 1953; (iii) a bank, as defined in the Investment Advisers Act of 1940; or (iv) an insurance company authorized to transact business in this State.

(b) All investment advice and services provided by an investment adviser or a consultant appointed under this Section shall be rendered pursuant to a written contract between the investment adviser and the board, and in accordance with the board's investment policy.

The contract shall include all of the following:

(1) acknowledgement in writing by the investment adviser that he or she is a fiduciary with respect to the pension fund;

(2) the board's investment policy;

(3) full disclosure of direct and indirect fees, commissions, penalties, and any other compensation that may be received by the investment adviser, including reimbursement for expenses; and

(4) a requirement that the investment adviser submit periodic written reports, on at least a quarterly basis, for the board's review at its regularly scheduled meetings. All returns on investment shall be reported as net returns after payment of all fees, commissions, and any other compensation.

(b-5) Each contract described in subsection (b) shall also include (i) full disclosure of direct and indirect fees, commissions, penalties, and other compensation, including reimbursement for expenses, that may be paid by or on behalf of the investment adviser or consultant in connection with the provision of services to the pension fund and (ii) a requirement that the investment adviser or consultant update the disclosure promptly after a modification of those payments or an additional payment.

Within 30 days after the effective date of this amendatory Act of the 95th General Assembly, each investment adviser and consultant providing services on the effective date or subject to an existing contract for the provision of services must disclose to the board of trustees all direct and indirect fees, commissions, penalties, and other compensation paid by or on behalf of the investment adviser or consultant in connection with the provision of those services and shall update that disclosure promptly after a modification of those payments or an additional payment.

A person required to make a disclosure under subsection (d) is also required to disclose direct and indirect fees, commissions, penalties, or other compensation that shall or may be paid by or on behalf of the person in connection with the rendering of those services. The person shall update the disclosure promptly after a modification of those payments or an additional payment.

The disclosures required by this subsection shall be in writing and shall include the date and amount of each payment and the name and address of each recipient of a payment.

(c) Within 30 days after appointing an investment adviser or consultant, the board shall submit a copy of the contract to the Division of Insurance of the Department of Financial and Professional Regulation.

(d) Investment services provided by a person other than an investment adviser appointed under this Section, including but not limited to services provided by the kinds of persons listed in items (1) through (4) of subsection (a), shall be rendered only after full written disclosure of direct and indirect fees, commissions, penalties, and any other compensation that shall or may be received by the person rendering those services.

(e) The board of trustees of each pension fund shall retain records of investment transactions in accordance with the rules of the Department of Financial and Professional Regulation.

Credits

Laws 1963, p. 161, § 1-113.5, added by P.A. 90-507, § 4, eff. Aug. 22, 1997. Amended by P.A. 95-950, § 10, eff. Aug. 29, 2008; P.A. 96-6, § 15, eff. April 3, 2009.

Footnotes

1 15 U.S.C.A. § 80b-1 et seq.

2 815 ILCS 5/1 et seq.

3 15 U.S.C.A. § 80A-1 et seq.

40 I.L.C.S. 5/1-113.5, IL ST CH 40 § 5/1-113.5
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 3. Police Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/3-125
Formerly cited as IL ST CH 108 1/2 ¶ 3-125

5/3-125. Financing

Effective: January 1, 2020
Currentness

§ 3-125. Financing.

(a) The city council or the board of trustees of the municipality shall annually levy a tax upon all the taxable property of the municipality at the rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of police officers, and revenues available from other sources, will equal a sum sufficient to meet the annual requirements of the police pension fund. The annual requirements to be provided by such tax levy are equal to (1) the normal cost of the pension fund for the year involved, plus (2) an amount sufficient to bring the total assets of the pension fund up to 90% of the total actuarial liabilities of the pension fund by the end of municipal fiscal year 2040, as annually updated and determined by an enrolled actuary employed by the Illinois Department of Insurance or by an enrolled actuary retained by the pension fund or the municipality. In making these determinations, the required minimum employer contribution shall be calculated each year as a level percentage of payroll over the years remaining up to and including fiscal year 2040 and shall be determined under the projected unit credit actuarial cost method. The tax shall be levied and collected in the same manner as the general taxes of the municipality, and in addition to all other taxes now or hereafter authorized to be levied upon all property within the municipality, and shall be in addition to the amount authorized to be levied for general purposes as provided by Section 8-3-1 of the Illinois Municipal Code, approved May 29, 1961, as amended. [1] The tax shall be forwarded directly to the treasurer of the board within 30 business days after receipt by the county.

(b) For purposes of determining the required employer contribution to a pension fund, the value of the pension fund's assets shall be equal to the actuarial value of the pension fund's assets, which shall be calculated as follows:

(1) On March 30, 2011, the actuarial value of a pension fund's assets shall be equal to the market value of the assets as of that date.

(2) In determining the actuarial value of the System's assets for fiscal years after March 30, 2011, 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 that fiscal year.

(c) If a participating municipality fails to transmit to the fund contributions required of it under this Article for more than 90 days after the payment of those contributions is due, the fund may, after giving notice to the municipality, certify to the State Comptroller the amounts of the delinquent payments in accordance with any applicable rules of the Comptroller, and the Comptroller must, beginning in fiscal year 2016, deduct and remit to the fund the certified amounts or a portion of those amounts from the following proportions of payments of State funds to the municipality:

(1) in fiscal year 2016, one-third of the total amount of any payments of State funds to the municipality;

(2) in fiscal year 2017, two-thirds of the total amount of any payments of State funds to the municipality; and

(3) in fiscal year 2018 and each fiscal year thereafter, the total amount of any payments of State funds to the municipality.

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

(d) The police pension fund shall consist of the following moneys which shall be set apart by the treasurer of the municipality:

(1) All moneys derived from the taxes levied hereunder;

(2) Contributions by police officers under Section 3-125.1;

(2.5) All moneys received from the Police Officers' Pension Investment Fund as provided in Article 22B of this Code;

(3) All moneys accumulated by the municipality under any previous legislation establishing a fund for the benefit of disabled or retired police officers;

(4) Donations, gifts or other transfers authorized by this Article.

(e) The Commission on Government Forecasting and Accountability shall conduct a study of all funds established under this Article and shall report its findings to the General Assembly on or before January 1, 2013. To the fullest extent possible, the study shall include, but not be limited to, the following:

(1) fund balances;

(2) historical employer contribution rates for each fund;

(3) the actuarial formulas used as a basis for employer contributions, including the actual assumed rate of return for each year, for each fund;

(4) available contribution funding sources;

(5) the impact of any revenue limitations caused by PTELL and employer home rule or non-home rule status; and

(6) existing statutory funding compliance procedures and funding enforcement mechanisms for all municipal pension funds.

Credits

Laws 1963, p. 161, § 3-125, eff. July 1, 1963. Amended by Laws 1963, p. 2367, § 1, eff. Aug. 5, 1963; P.A. 76-1691, § 1, eff. Oct. 6, 1969; P.A. 77-1555, § 1, eff. Sept. 17, 1971; P.A. 79-824, § 1, eff. Sept. 5, 1975; P.A. 81-1187, § 1, eff. Jan. 1, 1981; P.A. 81-1536, § 1, eff. Jan. 1, 1981; P.A. 83-1440, § 1, eff. Jan. 1, 1985; P.A. 95-530, § 5, eff. Aug. 28, 2007; P.A. 96-1495, § 5, eff. Jan. 1, 2011; P.A. 99-8, § 5-10, eff. July 9, 2015; P.A. 101-610, § 10, eff. Jan. 1, 2020.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 3-125.

Notes of Decisions (19)

Footnotes

1 65 ILCS 5/8-3-1.

40 I.L.C.S. 5/3-125, IL ST CH 40 § 5/3-125
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 3. Police Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/3-128
Formerly cited as IL ST CH 108 1/2 ¶ 3-128

5/3-128. Board created

Currentness

§ 3-128. Board created. A board of 5 members shall constitute a board of trustees to administer the pension fund and to designate the beneficiaries thereof. The board shall be known as the "Board of Trustees of the Police Pension Fund" of the municipality.

Two members of the board shall be appointed by the mayor or president of the board of trustees of the municipality involved. The 3rd and 4th members of the board shall be elected from the active participants of the pension fund by such active participants. The 5th member shall be elected by and from the beneficiaries.

One of the members appointed by the mayor or president of the board of trustees shall serve for one year beginning on the 2nd Tuesday in May after the municipality comes under this Article. The other appointed member shall serve for 2 years beginning on the same date. Their successors shall serve for 2 years each or until their successors are appointed and qualified.

The election for board members shall be held biennially on the 3rd Monday in April, at such place or places in the municipality and under the Australian ballot system and such other regulations as shall be prescribed by the appointed members of the board.

The active pension fund participants shall be entitled to vote only for the active participant members of the board. All beneficiaries of legal age may vote only for the member chosen from among the beneficiaries. No person shall be entitled to cast more than one ballot at such election. The term of elected members shall be 2 years, beginning on the 2nd Tuesday of the first May after the election.

Upon the death, resignation or inability to act of any elected board member, his or her successor shall be elected for the unexpired term at a special election, to be called by the board and conducted in the same manner as the regular biennial election.

Members of the board shall neither receive nor have any right to receive any salary from the pension fund for services performed as trustees in that office.

Credits
Laws 1963, p. 161, § 3-128, eff. July 1, 1963. Amended by Laws 1965, p. 2322, § 1, eff. Aug. 2, 1965; P.A. 83-1440, § 1, eff. Jan. 1, 1985.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 3-128.

Notes of Decisions (5)

40 I.L.C.S. 5/3-128, IL ST CH 40 § 5/3-128
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 3. Police Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/3-132
Formerly cited as IL ST CH 108 1/2 ¶ 3-132

5/3-132. To control and manage the Pension Fund

Effective: January 1, 2020
Currentness

§ 3-132. To control and manage the Pension Fund. In accordance with the applicable provisions of Articles 1 and 1A [1] and this Article, to control and manage, exclusively, the following:

(1) the pension fund,

(2) until the board's investment authority is terminated pursuant to Section 3-132.1, investment expenditures and income, including interest dividends, capital gains and other distributions on the investments, and

(3) all money donated, paid, assessed, or provided by law for the pensioning of disabled and retired police officers, their surviving spouses, minor children, and dependent parents.

All money received or collected shall be credited by the treasurer of the municipality to the account of the pension fund and held by the treasurer of the municipality subject to the order and control of the board. The treasurer of the municipality shall maintain a record of all money received, transferred, and held for the account of the board.

Credits
Laws 1963, p. 161, § 3-132, eff. July 1, 1963. Amended by P.A. 80-1495, § 46, eff. Jan. 8, 1979; P.A. 83-1440, § 1, eff. Jan. 1, 1985; P.A. 90-507, § 4, eff. Aug. 22, 1997; P.A. 101-610, § 10, eff. Jan. 1, 2020.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 3-132.

Notes of Decisions (12)

Footnotes

1 40 ILCS 5/1-101 et seq. and 5/1A-101 et seq.

40 I.L.C.S. 5/3-132, IL ST CH 40 § 5/3-132
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22b. The Police Officers Pension Investment Fund

40 ILCS 5/22B-115

5/22B-115. Board of Trustees of the Fund

Effective: January 1, 2020
Currentness

§ 22B-115. Board of Trustees of the Fund.

(a) No later than one month after the effective date of this amendatory Act of the 101st General Assembly or as soon thereafter as may be practicable, the Governor shall appoint, by and with the advice and consent of the Senate, a transition board of trustees consisting of 9 members as follows:

(1) three members representing municipalities who are mayors, presidents, chief executive officers, chief financial officers, or other officers, executives, or department heads of municipalities and appointed from among candidates recommended by the Illinois Municipal League;

(2) three members representing participants and who are participants, 2 of whom shall be appointed from among candidates recommended by a statewide fraternal organization representing more than 20,000 active and retired police officers in the State of Illinois, and one of whom shall be appointed from among candidates recommended by a benevolent association representing sworn police officers in the State of Illinois;

(3) two members representing beneficiaries and who are beneficiaries, one of whom shall be appointed from among candidates recommended by a statewide fraternal organization representing more than 20,000 active and retired police officers in the State of Illinois, and one of whom shall be appointed from among candidates recommended by a benevolent association representing sworn police officers in the State of Illinois; and

(4) one member who is a representative of the Illinois Municipal League.

The transition board members shall serve until the initial permanent board members are elected and qualified.

The transition board of trustees shall select the chairperson of the transition board of trustees from among the trustees for the duration of the transition board's tenure.

(b) The permanent board of trustees shall consist of 9 members as follows:

(1) Three members who are mayors, presidents, chief executive officers, chief financial officers, or other officers, executives, or department heads of municipalities that have participating pension funds and are elected by the mayors and presidents of municipalities that have participating pension funds.

(2) Three members who are participants of participating pension funds and are elected by the participants of participating pension funds.

(3) Two members who are beneficiaries of participating pension funds and are elected by the beneficiaries of participating pension funds.

(4) One member recommended by the Illinois Municipal League who shall be appointed by the Governor with the advice and consent of the Senate.

The permanent board of trustees shall select the chairperson of the permanent board of trustees from among the trustees for a term of 2 years. The holder of the office of chairperson shall alternate between a person elected or appointed under item (1) or (4) of this subsection (b) and a person elected under item (2) or (3) of this subsection (b).

(c) Each trustee shall qualify by taking an oath of office before the Secretary of State stating that he or she will diligently and honestly administer the affairs of the board and will not violate or knowingly permit the violation of any provision of this Article.

(d) Trustees shall receive no salary for service on the board but shall be reimbursed for travel expenses incurred while on business for the board according to the standards in effect for members of the Commission on Government Forecasting and Accountability.

A municipality employing a police officer who is an elected or appointed trustee of the board must allow reasonable time off with compensation for the police officer to conduct official business related to his or her position on the board, including time for travel. The board shall notify the municipality in advance of the dates, times, and locations of this official business. The Fund shall timely reimburse the municipality for the reasonable costs incurred that are due to the police officer's absence.

(e) No trustee shall have any interest in any brokerage fee, commission, or other profit or gain arising out of any investment directed by the board. This subsection does not preclude ownership by any member of any minority interest in any common stock or any corporate obligation in which an investment is directed by the board.

(f) Notwithstanding any provision or interpretation of law to the contrary, any member of the transition board may also be elected or appointed as a member of the permanent board.

Notwithstanding any provision or interpretation of law to the contrary, any trustee of a fund established under Article 3 of this Code may also be appointed as a member of the transition board or elected or appointed as a member of the permanent board.

The restriction in Section 3.1 of the Lobbyist Registration Act shall not apply to a member of the transition board appointed pursuant to item (4) of subsection (a) or to a member of the permanent board appointed pursuant to item (4) of subsection (b).

Credits

Laws 1963, p. 161, § 22B-115, added by P.A. 101-610, § 10, eff. Jan. 1, 2020.

40 I.L.C.S. 5/22B-115, IL ST CH 40 § 5/22B-115

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22b. The Police Officers Pension Investment Fund

40 ILCS 5/22B-118

5/22B-118. Operation and administration of the Fund

Effective: January 1, 2020
Currentness

§ 22B-118. Operation and administration of the Fund.

(a) The operation and administration of the Fund shall be managed by an executive director. No later than 2 months after the transition board is appointed or as soon thereafter as may be practicable, the transition board shall appoint an interim executive director who shall serve until a permanent executive director is appointed by the board, with such appointment to be made no later than 6 months after the end of the transition period. The executive director shall act subject to and under the supervision of the board and the board shall fix the compensation of the executive director.

(b) The board may appoint one or more custodians to facilitate the transfer of pension fund assets during the transition period, and subsequently to provide custodial and related fiduciary services on behalf of the board, and enter into contracts for such services. The board may also appoint external legal counsel and an independent auditing firm and may appoint investment advisors and other consultants as it determines to be appropriate and enter into contracts for such services. With approval of the board, the executive director may retain such other consultants, advisors, fiduciaries, and service providers as may be desirable and enter into contracts for such services.

(c) The board shall separately calculate account balances for each participating pension fund. The operations and financial condition of each participating pension fund account shall not affect the account balance of any other participating pension fund. Further, investment returns earned by the Fund shall be allocated and distributed pro rata among each participating pension fund account in accordance with the value of the pension fund assets attributable to each fund.

(d) With approval of the board, the executive director may employ such personnel, professional or clerical, as may be desirable and fix their compensation. The appointment and compensation of the personnel, including the executive director, shall not be subject to the Personnel Code.

(e) The board shall annually adopt a budget to support its operations and administration. The board shall apply moneys derived from the pension fund assets transferred and under its control to pay the costs and expenses incurred in the operation and administration of the Fund. The board shall from time to time transfer moneys and other assets to the participating pension funds as required for the participating pension funds to pay expenses, benefits, and other required payments to beneficiaries in the amounts and at the times prescribed in this Code.

(f) The board may exercise any of the powers granted to boards of trustees of pension funds under Sections 1-107 and 1-108 of this Code and may by resolution provide for the indemnification of its members and any of its officers, advisors, or employees in a manner consistent with those Sections.

(g) An office for meetings of the board and for its administrative personnel shall be established at any suitable place within the State as may be selected by the board. All books and records of the board shall be kept in such office.

(h) The board shall contract for a blanket fidelity bond in the penal sum of not less than $1,000,000 to cover members of the board of trustees, the executive director, and all other employees of the board, conditioned for the faithful performance of the duties of their respective offices, the premium on which shall be paid by the board.

Credits

Laws 1963, p. 161, § 22B-118, added by P.A. 101-610, § 10, eff. Jan. 1, 2020.

40 I.L.C.S. 5/22B-118, IL ST CH 40 § 5/22B-118

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22b. The Police Officers Pension Investment Fund

40 ILCS 5/22B-120

5/22B-120. Transition period; transfer of securities, assets, and investment functions

Effective: January 1, 2020
Currentness

§ 22B-120. Transition period; transfer of securities, assets, and investment functions.

(a) The transition period shall commence on the effective date of this amendatory Act of the 101st General Assembly and shall end as determined by the board, consistent with and in the application of its fiduciary responsibilities, but in no event later than 30 months thereafter.

(b) The board may retain the services of custodians, investment consultants, and other professional services it deems prudent to implement the transition of assets described in this Section. The permanent board of trustees shall not be bound by any contract or agreement regarding such custodians, investment consultants, or other professional services entered into by the transition board of trustees.

(c) As soon as practicable after the effective date of this amendatory Act of the 101st General Assembly, the board, in cooperation with the Department of Insurance, shall audit the investment assets of each transferor pension fund to determine a certified investment asset list for each transferor pension fund. The audit shall be performed by a certified public accountant engaged by the board, and the board shall be responsible for payment of the costs and expenses associated with the audit. Upon completion of the audit for any transferor pension fund, the board and the Department of Insurance shall provide the certified investment asset list to that transferor pension fund. Upon determination of the certified investment asset list for any transferor pension fund, the board shall, within 10 business days or as soon thereafter as may be practicable as determined by the board, initiate the transfer of assets from that transferor pension fund. Further and to maintain accuracy of the certified investment asset list, upon determination of the certified investment asset list for a transferor pension fund, that fund shall not purchase or sell any of its pension fund assets.

(d) When the Fund is prepared to receive pension fund assets from any transferor pension fund, the executive director shall notify in writing the board of trustees of that transferor pension fund of the Fund's intent to assume fiduciary control of those pension fund assets, and the date at which it will assume such control and that the transferor pension fund will cease to exercise fiduciary responsibility. This letter shall be transmitted no less than 30 days prior to the transfer date. A copy of the letter shall be transmitted to the Department of Insurance. Upon receipt of the letter, the transferor pension fund shall promptly notify its custodian, as well as any and all entities with fiduciary control of any portion of the pension assets. Each transferor pension fund shall have sole fiduciary and statutory responsibility for the management of its pension assets until the start of business on

the transfer date. At the start of business on the transfer date, statutory and fiduciary responsibility for the investment of pension fund assets shall shift exclusively to the Fund and the Fund shall promptly and prudently transfer all such pension fund assets to the board and terminate the relationship with the local custodian of that transferor pension fund. The Fund shall provide a receipt for the transfer to the transferor pension fund within 30 days of the transfer date.

As used in this subsection, “transfer date” means the date at which the Fund will assume fiduciary control of the transferor pension fund's assets and the transferor pension fund will cease to exercise fiduciary responsibility.

(e) Within 90 days after the end of the transition period or as soon thereafter as may be practicable as determined by the board, the Fund and the Department of Insurance shall cooperate in transferring to the Fund all pension fund assets remaining in the custody of the transferor pension funds.

(f) The board shall adopt such rules as in its judgment are desirable to implement the transition process, including, without limitation, the transfer of the pension fund assets of the transferor pension funds, the assumption of fiduciary control of such assets by the Fund, and the termination of relationships with local custodians. The adoption and effectiveness of such rules and regulations shall not be subject to Article 5 of the Illinois Administrative Procedure Act.

(g) Within 6 months after the end of the transition period or as soon thereafter as may be practicable as determined by the board, the books, records, accounts, and securities of the Fund shall be audited by a certified public accountant selected by the board. This audit shall include, but not be limited to, the following: (1) a full description of the investments acquired, showing average costs; (2) a full description of the securities sold or exchanged, showing average proceeds or other conditions of an exchange; (3) gains or losses realized during the period; (4) income from investments; and (5) administrative expenses incurred by the board. This audit report shall be published on the Fund's official website and filed with the Department of Insurance.

(h) To provide funds for payment of the ordinary and regular costs associated with the implementation of this transition process, the Illinois Finance Authority is authorized to loan to the Fund up to $7,500,000 of any of the Authority's funds, including, but not limited to, funds in its Illinois Housing Partnership Program Fund, its Industrial Project Insurance Fund, or its Illinois Venture Investment Fund, for such purpose. Such loan shall be repaid by the Fund with an interest rate tied to the Federal Funds Rate or an equivalent market established variable rate. The Fund and the Illinois Finance Authority shall enter into a loan or similar agreement that specifies the period of the loan, the payment interval, procedures for making periodic loans, the variable rate methodology to which the interest rate for loans should be tied, the funds of the Illinois Finance Authority that will be used to provide the loan, and such other terms that the Fund and the Illinois Finance Authority reasonably believe to be mutually beneficial. Such agreement shall be a public record and the Fund shall post the terms of the agreement on its official website.

Credits

Laws 1963, p. 161, § 22B-120, added by P.A. 101-610, § 10, eff. Jan. 1, 2020.

40 I.L.C.S. 5/22B-120, IL ST CH 40 § 5/22B-120

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 4. Firefighters Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/4-118
Formerly cited as IL ST CH 108 1/2 ¶ 4-118

5/4-118. Financing

Effective: August 20, 2021
Currentness

§ 4-118. Financing.

(a) The city council or the board of trustees of the municipality shall annually levy a tax upon all the taxable property of the municipality at the rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of firefighters and revenues available from other sources, will equal a sum sufficient to meet the annual actuarial requirements of the pension fund, as determined by an enrolled actuary employed by the Illinois Department of Insurance or by an enrolled actuary retained by the pension fund or municipality. For the purposes of this Section, the annual actuarial requirements of the pension fund are equal to (1) the normal cost of the pension fund, or 17.5% of the salaries and wages to be paid to firefighters for the year involved, whichever is greater, plus (2) an annual amount sufficient to bring the total assets of the pension fund up to 90% of the total actuarial liabilities of the pension fund by the end of municipal fiscal year 2040, as annually updated and determined by an enrolled actuary employed by the Illinois Department of Insurance or by an enrolled actuary retained by the pension fund or the municipality. In making these determinations, the required minimum employer contribution shall be calculated each year as a level percentage of payroll over the years remaining up to and including fiscal year 2040 and shall be determined under the projected unit credit actuarial cost method. The amount to be applied towards the amortization of the unfunded accrued liability in any year shall not be less than the annual amount required to amortize the unfunded accrued liability, including interest, as a level percentage of payroll over the number of years remaining in the 40-year amortization period.

(a-2) A municipality that has established a pension fund under this Article and that employs a full-time firefighter, as defined in Section 4-106, shall be deemed a primary employer with respect to that full-time firefighter. Any municipality of 5,000 or more inhabitants that employs or enrolls a firefighter while that firefighter continues to earn service credit as a participant in a primary employer's pension fund under this Article shall be deemed a secondary employer and such employees shall be deemed to be secondary employee firefighters. To ensure that the primary employer's pension fund under this Article is aware of additional liabilities and risks to which firefighters are exposed when performing work as firefighters for secondary employers, a secondary employer shall annually prepare a report accounting for all hours worked by and wages and salaries paid to the secondary employee firefighters it receives services from or employs for each fiscal year in which such firefighters are employed and transmit a certified copy of that report to the primary employer's pension fund, the Department of Insurance, and the secondary employee firefighter no later than 30 days after the end of any fiscal year in which wages were paid to the secondary employee firefighters.

Nothing in this Section shall be construed to allow a secondary employee to qualify for benefits or creditable service for employment as a firefighter for a secondary employer.

(a-5) For purposes of determining the required employer contribution to a pension fund, the value of the pension fund's assets shall be equal to the actuarial value of the pension fund's assets, which shall be calculated as follows:

(1) On March 30, 2011, the actuarial value of a pension fund's assets shall be equal to the market value of the assets as of that date.

(2) In determining the actuarial value of the pension fund's assets for fiscal years after March 30, 2011, 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 that fiscal year.

(b) The tax shall be levied and collected in the same manner as the general taxes of the municipality, and shall be in addition to all other taxes now or hereafter authorized to be levied upon all property within the municipality, and in addition to the amount authorized to be levied for general purposes, under Section 8-3-1 of the Illinois Municipal Code [1] or under Section 14 of the Fire Protection District Act. [2] The tax shall be forwarded directly to the treasurer of the board within 30 business days of receipt by the county (or, in the case of amounts added to the tax levy under subsection (f), used by the municipality to pay the employer contributions required under subsection (b-1) of Section 15-155 of this Code).

(b-5) If a participating municipality fails to transmit to the fund contributions required of it under this Article for more than 90 days after the payment of those contributions is due, the fund may, after giving notice to the municipality, certify to the State Comptroller the amounts of the delinquent payments in accordance with any applicable rules of the Comptroller, and the Comptroller must, beginning in fiscal year 2016, deduct and remit to the fund the certified amounts or a portion of those amounts from the following proportions of payments of State funds to the municipality:

(1) in fiscal year 2016, one-third of the total amount of any payments of State funds to the municipality;

(2) in fiscal year 2017, two-thirds of the total amount of any payments of State funds to the municipality; and

(3) in fiscal year 2018 and each fiscal year thereafter, the total amount of any payments of State funds to the municipality.

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

(c) The board shall make available to the membership and the general public for inspection and copying at reasonable times the most recent Actuarial Valuation Balance Sheet and Tax Levy Requirement issued to the fund by the Department of Insurance.

(d) The firefighters' pension fund shall consist of the following moneys which shall be set apart by the treasurer of the municipality: (1) all moneys derived from the taxes levied hereunder; (2) contributions by firefighters as provided under Section 4-118.1; (2.5) all moneys received from the Firefighters' Pension Investment Fund as provided in Article 22C of this Code; (3)

all rewards in money, fees, gifts, and emoluments that may be paid or given for or on account of extraordinary service by the fire department or any member thereof, except when allowed to be retained by competitive awards; and (4) any money, real estate or personal property received by the board.

(e) For the purposes of this Section, "enrolled actuary" means an actuary: (1) who is a member of the Society of Actuaries or the American Academy of Actuaries; and (2) who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974, [3] or who has been engaged in providing actuarial services to one or more public retirement systems for a period of at least 3 years as of July 1, 1983.

(f) The corporate authorities of a municipality that employs a person who is described in subdivision (d) of Section 4-106 may add to the tax levy otherwise provided for in this Section an amount equal to the projected cost of the employer contributions required to be paid by the municipality to the State Universities Retirement System under subsection (b-1) of Section 15-155 of this Code.

(g) The Commission on Government Forecasting and Accountability shall conduct a study of all funds established under this Article and shall report its findings to the General Assembly on or before January 1, 2013. To the fullest extent possible, the study shall include, but not be limited to, the following:

(1) fund balances;

(2) historical employer contribution rates for each fund;

(3) the actuarial formulas used as a basis for employer contributions, including the actual assumed rate of return for each year, for each fund;

(4) available contribution funding sources;

(5) the impact of any revenue limitations caused by PTELL and employer home rule or non-home rule status; and

(6) existing statutory funding compliance procedures and funding enforcement mechanisms for all municipal pension funds.

Credits

Laws 1963, p. 161, § 4-118, eff. July 1, 1963. Amended by Laws 1963, p. 2363, § 1, eff. Aug. 5, 1963; Laws 1967, p. 2474, § 1, eff. July 31, 1967; P.A. 81-585, § 1, eff. Jan. 1, 1980; P.A. 81-1187, § 1, eff. Jan. 1, 1981; P.A. 81-1509, Art. I, § 62, eff. Sept. 26, 1980; P.A. 81-1536, § 1, eff. Jan. 1, 1981; P.A. 82-267, § 1, eff. Jan. 1, 1982; P.A. 83-912, § 1, eff. Nov. 3, 1983; P.A. 83-1440, § 1, eff. Jan. 1, 1985; P.A. 85-941, § 1, eff. July 1, 1988; P.A. 87-1265, § 1, eff. Jan. 25, 1993; P.A. 90-576, § 5, eff. March 31, 1998; P.A. 94-859, § 5, eff. June 15, 2006; P.A. 96-1495, § 5, eff. Jan. 1, 2011; P.A. 99-8, § 5-10, eff. July 9, 2015; P.A. 101-522, § 5, eff. Aug. 23, 2019; P.A. 101-610, § 10, eff. Jan. 1, 2020; P.A. 102-59, § 5, eff. July 9, 2021; P.A. 102-558, § 255, eff. Aug. 20, 2021.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 4-118.

Notes of Decisions (18)

Footnotes

1 65 ILCS 5/8-3-1.

2 70 ILCS 705/14.

3 29 U.S.C.A. § 1241 et seq.

40 I.L.C.S. 5/4-118, IL ST CH 40 § 5/4-118
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 4. Firefighters Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/4-121
Formerly cited as IL ST CH 108 1/2 ¶ 4-121

5/4-121. Board created

Effective: August 18, 2017
Currentness

§ 4-121. Board created. There is created in each municipality or fire protection district a board of trustees to be known as the "Board of Trustees of the Firefighters' Pension Fund". The membership of the board for each municipality shall be, respectively, as follows: in cities, the treasurer, clerk, marshal or chief officer of the fire department, and the comptroller if there is one, or if not, the mayor; in each township, village or incorporated town, the president of the municipality's board of trustees, the village or town clerk, village or town attorney, village or town treasurer, and the chief officer of the fire department; and in each fire protection district, the president and other 2 members of its board of trustees and the marshal or chief of its fire department or service, as the case may be; and in all the municipalities above designated 3 additional persons chosen from their active firefighters and one other person who has retired under the Firemen's Pension Fund Act of 1919, [1] or this Article. Notwithstanding any provision of this Section to the contrary, the term of office of each member of a board established on or before the 3rd Monday in April, 2006 shall terminate on the 3rd Monday in April, 2006, but all incumbent members shall continue to exercise all of the powers and be subject to all of the duties of a member of the board until all the new members of the board take office.

Beginning on the 3rd Monday in April, 2006, the board for each municipality or fire protection district shall consist of 5 members. Two members of the board shall be appointed by the mayor or president of the board of trustees of the municipality or fire protection district involved. Two members of the board shall be active participants of the pension fund who are elected from the active participants of the fund. One member of the board shall be a person who is retired under the Firemen's Pension Fund Act of 1919 or this Article who is elected from persons retired under the Firemen's Pension Fund Act of 1919 or this Article.

For the purposes of this Section, a firefighter receiving a disability pension shall be considered a retired firefighter. In the event that there are no retired firefighters under the Fund or if none is willing to serve on the board, then an additional active firefighter shall be elected to the board in lieu of the retired firefighter that would otherwise be elected.

If the regularly constituted fire department of a municipality is dissolved and Section 4-106.1 is not applicable, the board shall continue to exist and administer the Fund so long as there continues to be any annuitant or deferred pensioner in the Fund. In such cases, elections shall continue to be held as specified in this Section, except that: (1) deferred pensioners shall be deemed to be active members for the purposes of such elections; (2) any otherwise unfillable positions on the board, including ex officio positions, shall be filled by election from the remaining firefighters and deferred pensioners of the Fund, to the extent possible; and (3) if the membership of the board falls below 3 persons, the Illinois Director of Insurance or his designee shall be deemed a member of the board, ex officio.

The members chosen from the active and retired firefighters shall be elected by ballot at elections to be held on the 3rd Monday in April of the applicable years under the Australian ballot system, at such place or places, in the municipality, and under such regulations as shall be prescribed by the board.

No person shall cast more than one vote for each candidate for whom he or she is eligible to vote. In the elections for board members to be chosen from the active firefighters, all active firefighters and no others may vote. In the elections for board members to be chosen from retired firefighters, the retired firefighters and no others may vote.

Each member of the board so elected shall hold office for a term of 3 years and until his or her successor has been duly elected and qualified.

The board shall canvass the ballots and declare which persons have been elected and for what term or terms respectively. In case of a tie vote between 2 or more candidates, the board shall determine by lot which candidate or candidates have been elected and for what term or terms respectively. In the event of the failure, resignation, or inability to act of any board member, a successor shall be elected for the unexpired term at a special election called by the board and conducted in the same manner as a regular election.

The board shall elect annually from its members a president and secretary.

Board members shall not receive or have any right to receive any salary from a pension fund for services performed as board members.

Credits

Laws 1963, p. 161, § 4-121, eff. July 1, 1963. Amended by P.A. 79-809, § 1, eff. Oct. 1, 1975; P.A. 82-267, § 1, eff. Jan. 1, 1982; P.A. 83-379, § 1, eff. Sept. 14, 1983; P.A. 83-1440, § 1, eff. Jan. 1, 1985; P.A. 84-1039, § 1, eff. Nov. 26, 1985; P.A. 94-317, § 5, eff. July 25, 2005; P.A. 96-1000, § 225, eff. July 2, 2010; P.A. 100-201, § 240, eff. Aug. 18, 2017.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 4-121.

Notes of Decisions (4)

Footnotes

1 Former Ill.Rev.Stat. ch. 24, ¶ 918 et seq. (repealed).

40 I.L.C.S. 5/4-121, IL ST CH 40 § 5/4-121

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 4. Firefighters Pension Fund--Municipalities 500,000 and Under (Refs & Annos)

40 ILCS 5/4-123
Formerly cited as IL ST CH 108 1/2 ¶ 4-123

5/4-123. To control and manage the Pension Fund

Effective: January 1, 2020
Currentness

§ 4-123. To control and manage the Pension Fund. In accordance with the applicable provisions of Articles 1 and 1A [1] and this Article, to control and manage, exclusively, the following:

(1) the pension fund,

(2) until the board's investment authority is terminated pursuant to Section 4-123.2, investment expenditures and income, including interest dividends, capital gains, and other distributions on the investments, and

(3) all money donated, paid, assessed, or provided by law for the pensioning of disabled and retired firefighters, their surviving spouses, minor children, and dependent parents.

All money received or collected shall be credited by the treasurer of the municipality to the account of the pension fund and held by the treasurer of the municipality subject to the order and control of the board. The treasurer of the municipality shall maintain a record of all money received, transferred, and held for the account of the board.

Credits
Laws 1963, p. 161, § 4-123, eff. July 1, 1963. Amended by P.A. 83-1440, § 1, eff. Jan. 1, 1985; P.A. 90-507, § 4, eff. Aug. 22, 1997; P.A. 101-610, § 10, eff. Jan. 1, 2020.

Formerly Ill.Rev.Stat.1991, ch. 108 ½, ¶ 4-123.

Notes of Decisions (8)

Footnotes

1 40 ILCS 5/1-101 et seq. and 5/1A-101 et seq.

40 I.L.C.S. 5/4-123, IL ST CH 40 § 5/4-123
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22c. The Firefighters Pension Investment Fund

40 ILCS 5/22C-115

5/22C-115. Board of Trustees of the Fund

Effective: August 20, 2021
Currentness

§ 22C-115. Board of Trustees of the Fund.

(a) No later than February 1, 2020 (one month after the effective date of Public Act 101-610) or as soon thereafter as may be practicable, the Governor shall appoint, by and with the advice and consent of the Senate, a transition board of trustees consisting of 9 members as follows:

(1) three members representing municipalities and fire protection districts who are mayors, presidents, chief executive officers, chief financial officers, or other officers, executives, or department heads of municipalities or fire protection districts and appointed from among candidates recommended by the Illinois Municipal League;

(2) three members representing participants who are participants and appointed from among candidates recommended by the statewide labor organization representing firefighters employed by at least 85 municipalities that is affiliated with the Illinois State Federation of Labor;

(3) one member representing beneficiaries who is a beneficiary and appointed from among the candidate or candidates recommended by the statewide labor organization representing firefighters employed by at least 85 municipalities that is affiliated with the Illinois State Federation of Labor;

(4) one member recommended by the Illinois Municipal League; and

(5) one member who is a participant recommended by the statewide labor organization representing firefighters employed by at least 85 municipalities and that is affiliated with the Illinois State Federation of Labor.

The transition board members shall serve until the initial permanent board members are elected and qualified.

The transition board of trustees shall select the chairperson of the transition board of trustees from among the trustees for the duration of the transition board's tenure.

(b) The permanent board of trustees shall consist of 9 members comprised as follows:

(1) Three members who are mayors, presidents, chief executive officers, chief financial officers, or other officers, executives, or department heads of municipalities or fire protection districts that have participating pension funds and are elected by the mayors and presidents of municipalities or fire protection districts that have participating pension funds.

(2) Three members who are participants of participating pension funds and elected by the participants of participating pension funds.

(3) One member who is a beneficiary of a participating pension fund and is elected by the beneficiaries of participating pension funds.

(4) One member recommended by the Illinois Municipal League who shall be appointed by the Governor with the advice and consent of the Senate.

(5) One member recommended by the statewide labor organization representing firefighters employed by at least 85 municipalities and that is affiliated with the Illinois State Federation of Labor who shall be appointed by the Governor with the advice and consent of the Senate.

The permanent board of trustees shall select the chairperson of the permanent board of trustees from among the trustees for a term of 2 years. The holder of the office of chairperson shall alternate between a person elected or appointed under item (1) or (4) of this subsection (b) and a person elected or appointed under item (2), (3), or (5) of this subsection (b).

(c) Each trustee shall qualify by taking an oath of office before the Secretary of State stating that he or she will diligently and honestly administer the affairs of the board and will not violate or knowingly permit the violation of any provision of this Article.

(d) Trustees shall receive no salary for service on the board but shall be reimbursed for travel expenses incurred while on business for the board according to the standards in effect for members of the Commission on Government Forecasting and Accountability.

A municipality or fire protection district employing a firefighter who is an elected or appointed trustee of the board must allow reasonable time off with compensation for the firefighter to conduct official business related to his or her position on the board, including time for travel. The board shall notify the municipality or fire protection district in advance of the dates, times, and locations of this official business. The Fund shall timely reimburse the municipality or fire protection district for the reasonable costs incurred that are due to the firefighter's absence.

(e) No trustee shall have any interest in any brokerage fee, commission, or other profit or gain arising out of any investment directed by the board. This subsection does not preclude ownership by any member of any minority interest in any common stock or any corporate obligation in which an investment is directed by the board.

(f) Notwithstanding any provision or interpretation of law to the contrary, any member of the transition board may also be elected or appointed as a member of the permanent board.

Notwithstanding any provision or interpretation of law to the contrary, any trustee of a fund established under Article 4 of this Code may also be appointed as a member of the transition board or elected or appointed as a member of the permanent board.

The restriction in Section 3.1 of the Lobbyist Registration Act shall not apply to a member of the transition board appointed pursuant to items (4) or (5) of subsection (a) or to a member of the permanent board appointed pursuant to items (4) or (5) of subsection (b).

Credits

Laws 1963, p. 161, § 22C-115, added by P.A. 101-610, § 10, eff. Jan. 1, 2020. Amended by P.A. 102-558, § 255, eff. Aug. 20, 2021.

40 I.L.C.S. 5/22C-115, IL ST CH 40 § 5/22C-115
Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22c. The Firefighters Pension Investment Fund

40 ILCS 5/22C-118

5/22C-118. Operation and administration of the Fund

Effective: January 1, 2020
Currentness

§ 22C-118. Operation and administration of the Fund.

(a) The operation and administration of the Fund shall be managed by an executive director. No later than 2 months after the transition board is appointed or as soon thereafter as may be practicable, the transition board shall appoint an interim executive director who shall serve until a permanent executive director is appointed by the board, with such appointment to be made no later than 6 months after the end of the transition period. The executive director shall act subject to and under the supervision of the board and the board shall fix the compensation of the executive director.

(b) The board may appoint one or more custodians to facilitate the transfer of pension fund assets during the transition period, and subsequently to provide custodial and related fiduciary services on behalf of the board, and enter into contracts for such services. The board may also appoint external legal counsel and an independent auditing firm and may appoint investment advisors and other consultants as it determines to be appropriate and enter into contracts for such services. With approval of the board, the executive director may retain such other consultants, advisors, fiduciaries, and service providers as may be desirable and enter into contracts for such services.

(c) The board shall separately calculate account balances for each participating pension fund. The operations and financial condition of each participating pension fund account shall not affect the account balance of any other participating pension fund. Further, investment returns earned by the Fund shall be allocated and distributed pro rata among each participating pension fund account in accordance with the value of the pension fund assets attributable to each fund.

(d) With approval of the board, the executive director may employ such personnel, professional or clerical, as may be desirable and fix their compensation. The appointment and compensation of the personnel, including the executive director, shall not be subject to the Personnel Code.

(e) The board shall annually adopt a budget to support its operations and administration. The board shall apply moneys derived from the pension fund assets transferred and under its control to pay the costs and expenses incurred in the operation and administration of the Fund. The board shall from time to time transfer moneys and other assets to the participating pension funds as required for the participating pension funds to pay expenses, benefits, and other required payments to beneficiaries in the amounts and at the times prescribed in this Code.

(f) The board may exercise any of the powers granted to boards of trustees of pension funds under Sections 1-107 and 1-108 of this Code and may by resolution provide for the indemnification of its members and any of its officers, advisors, or employees in a manner consistent with those Sections.

(g) An office for meetings of the board and for its administrative personnel shall be established at any suitable place within the State as may be selected by the board. All books and records of the board shall be kept in such office.

(h) The board shall contract for a blanket fidelity bond in the penal sum of not less than $1,000,000 to cover members of the board of trustees, the executive director, and all other employees of the board, conditioned for the faithful performance of the duties of their respective offices, the premium on which shall be paid by the board.

Credits

Laws 1963, p. 161, § 22C-118, added by P.A. 101-610, § 10, eff. Jan. 1, 2020.

40 I.L.C.S. 5/22C-118, IL ST CH 40 § 5/22C-118

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 40. Pensions
Act 5. Illinois Pension Code (Refs & Annos)
Article 22c. The Firefighters Pension Investment Fund

40 ILCS 5/22C-120

5/22C-120. Transition period; transfer of securities, assets, and investment functions

Effective: January 1, 2020
Currentness

§ 22C-120. Transition period; transfer of securities, assets, and investment functions.

(a) The transition period shall commence on the effective date of this amendatory Act of the 101st General Assembly and shall end as determined by the board, consistent with and in the application of its fiduciary responsibilities, but in no event later than 30 months thereafter.

(b) The board may retain the services of custodians, investment consultants, and other professional services it deems prudent to implement the transition of assets described in this Section. The permanent board of trustees shall not be bound by any contract or agreement regarding such custodians, investment consultants, or other professional services entered into by the transition board of trustees.

(c) As soon as practicable after the effective date of this amendatory Act of the 101st General Assembly, the board, in cooperation with the Department of Insurance, shall audit the investment assets of each transferor pension fund to determine a certified investment asset list for each transferor pension fund. The audit shall be performed by a certified public accountant engaged by the board, and the board shall be responsible for payment of the costs and expenses associated with the audit. Upon completion of the audit for any transferor pension fund, the board and the Department of Insurance shall provide the certified investment asset list to that transferor pension fund. Upon determination of the certified investment asset list for any transferor pension fund, the board shall, within 10 business days or as soon thereafter as may be practicable, as determined by the board, initiate the transfer of assets from that transferor pension fund. Further and to maintain accuracy of the certified investment asset list, upon determination of the certified investment asset list for a transferor pension fund, that fund shall not purchase or sell any of its pension fund assets.

(d) When the Fund is prepared to receive pension fund assets from any transferor pension fund, the executive director shall notify in writing the board of trustees of that transferor pension fund of the Fund's intent to assume fiduciary control of those pension fund assets, and the date at which it will assume such control and that the transferor pension fund will cease to exercise fiduciary responsibility. This letter shall be transmitted no less than 30 days prior to the transfer date. A copy of the letter shall be transmitted to the Department of Insurance. Upon receipt of the letter, the transferor pension fund shall promptly notify its custodian, as well as any and all entities with fiduciary control of any portion of the pension assets. Each transferor pension fund shall have sole fiduciary and statutory responsibility for the management of its pension assets until the start of business on the transfer date. At the start of business on the transfer date, statutory and fiduciary responsibility for the investment of pension fund assets shall shift exclusively to the Fund and the Fund shall promptly and prudently transfer all such pension fund assets

to the board and terminate the relationship with the local custodian of that transferor pension fund. The Fund shall provide a receipt for the transfer to the transferor pension fund within 30 days of the transfer date.

As used in this subsection, “transfer date” means the date at which the Fund will assume fiduciary control of the transferor pension fund's assets and the transferor pension fund will cease to exercise fiduciary responsibility.

(e) Within 90 days after the end of the transition period or as soon thereafter as may be practicable as determined by the board, the Fund and the Department of Insurance shall cooperate in transferring to the Fund all pension fund assets remaining in the custody of the transferor pension funds.

(f) The board shall adopt such rules as in its judgment are desirable to implement the transition process, including, without limitation, the transfer of the pension fund assets of the transferor pension funds, the assumption of fiduciary control of such assets by the Fund, and the termination of relationships with local custodians. The adoption and effectiveness of such rules and regulations shall not be subject to Article 5 of the Illinois Administrative Procedure Act.

(g) Within 6 months after the end of the transition period or as soon thereafter as may be practicable as determined by the board, the books, records, accounts, and securities of the Fund shall be audited by a certified public accountant selected by the board. This audit shall include, but not be limited to, the following: (1) a full description of the investments acquired, showing average costs; (2) a full description of the securities sold or exchanged, showing average proceeds or other conditions of an exchange; (3) gains or losses realized during the period; (4) income from investments; and (5) administrative expenses incurred by the board. This audit report shall be published on the Fund's official website and filed with the Department of Insurance.

(h) To provide funds for payment of the ordinary and regular costs associated with the implementation of this transition process, the Illinois Finance Authority is authorized to loan to the Fund up to $7,500,000 of any of the Authority's funds, including, but not limited to, funds in its Illinois Housing Partnership Program Fund, its Industrial Project Insurance Fund, or its Illinois Venture Investment Fund, for such purpose. Such loan shall be repaid by the Fund with an interest rate tied to the Federal Funds Rate or an equivalent market established variable rate. The Fund and the Illinois Finance Authority shall enter into a loan or similar agreement that specifies the period of the loan, the payment interval, procedures for making periodic loans, the variable rate methodology to which the interest rate for loans should be tied, the funds of the Illinois Finance Authority that will be used to provide the loan, and such other terms that the Fund and the Illinois Finance Authority reasonably believe to be mutually beneficial. Such agreement shall be a public record and the Fund shall post the terms of the agreement on its official website.

Credits

Laws 1963, p. 161, § 22C-120, added by P.A. 101-610, § 10, eff. Jan. 1, 2020.

40 I.L.C.S. 5/22C-120, IL ST CH 40 § 5/22C-120

Current through P.A. 102-981 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document