

ILLINOIS PUBLIC PENSION FUND ASSOCIATION

An Association of Police and Fire Pension Funds

PENSION TRUSTEE NEWSLETTER

Leading Public Pension Funds Through the 21st Century

APRIL 2008

LET THE GAMES BEGIN

By James M. McNamee, IPPFA President

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We have all seen Illinois Municipal League report on the financial condition of the Police and Fire pension funds. They are now asking cities to give out press releases and hold hearings about the findings. So let's look at those findings.

The first question we need to ask is...

Are these the numbers our city is reporting on their GASB statement?

If not, then if your city hired an outside actuary, the numbers reported in IML's report are inaccurate.

Second question is...

Are these the numbers that are used when issuing Municipal bonds, so that the bond issuers have accurate

Quite often in disability hearings this can be an issue. As an example, there are times when an officer may become injured or disabled and cease work on a particu-

financial information when underwriting?

If the answer is no, then the IML report is not accurate.

We at the IPPFA believe the report is inaccurate and that is why we did our own report. We do not believe there is a crisis. There are some problems caused by...

The current actuarial method which was changed in the 1990's at IML's request. The property tax cap which squeezes the amount of money that can be levied for the fund and finally the restrictive investment code which does little to protect the pension fund, and in reality causes us to lose investment returns.

The smoke and mirrors

report from IML does little to address what the real issues are. Attempting to link Public Safety Officers benefits as the problem is dishonest.

You can't have it both ways. Saying your fund is in good shape, reporting smaller unfunded liabilities on GASB and for bond issuers. Then raising a red flag to the public saying we are in bad shape. Which is it? Who is telling the truth?

Propaganda serves to inform no-one, only to inflame.

There are many occasions that arise before a Pension Board when it becomes important to determine not only the amount of a pension, but what is the effective date of the pension.

WHAT IS THE EFFECTIVE DATE FOR A PENSION TO COMMENCE?

By James L. Dobrovolny, Attorney at Law

lar date, file an application for a disability pension at a later date, sick pay and personal time then runs out, he begins receiving Continuing Compensation under the

Public Employee Disability Act (5 ILCS 34511), a contract changing salary attached to rank is settled retroactive to a date prior to the (continued page two)

WHAT IS THE EFFECTIVE DATE FOR A PENSION TO COMMENCE? *(continued from page one)*

last day of service, and then several months or in some cases years later receive a decision from the Pension Board granting a disability pension. The question becomes, what is the effective date for the pension to commence. Mixed in with this example is the question is how much should the pension be.

Your author is of the opinion that it begins at the later of two dates: the date of application or the date he no longer receives compensation from the City. The date of the Board's decision should not be relevant as to date of commencement, because:

As noted in almost every public pension case ever decided, the statute should be liberally construed in favor of the applicant; and not that I have ever seen this happen, but a Board could unreasonably delay their decision.

The date of suspension or retirement is relevant for determining the amount of disability pension and the fact of disability as per the Hahn case cited below, not the effective date of pension payments. In support of this position, there is the signal case of Olson v City of Wheaton Police Pension Bd., 106 Ill.Dec. 596 at 599, 153 Ill.App.3d 595, 505 N.E.2d 1387 (2d Dist. 1987). In Olson, there were two issues before the Court; whether the Board's decision denying Olson a line-of-duty disability was against the manifest weight of the evidence; and whether the Board erred in its determination of the time when Plaintiff's pension was to commence.

Plaintiff last worked August 1, 1985 and applied in August of 1985 for a line-of-duty disability pursuant to section 3-114.1 of the Pen-

sion Code based on stress. He continued to receive full pay until November 10, 1985. On December 11, 1985, the Board denied plaintiff a line-of-duty disability pension and awarded him a not-on-duty pension effective November 11, 1985. The Circuit Court confirmed the Board's decision on administrative review.

The Appellate Court found that the Board did not err in denying a line-of-duty pension based on the grounds that the factors that brought about his stress did not result from the performance of an act of duty. The Court therefore did not address plaintiff's argument that the Board's decision was against the manifest weight of the evidence.

As to the date of commencement of pension payments issue, Plaintiff contended that a rule established by the Board, which set the effective date of a disability pension as the latter of the date the applicant is removed from the payroll or the date the application was received by the Board, violates section 3-114.1 of the Pension Code (line-of-duty disability provision). Plaintiff argued that this provision requires that his disability pension start from August 1, 1985, the date he ceased working, rather than from November 11, 1985, as fixed by the Board.

The Olson Court stated:

"This court noted in Hahn v. Police Pension Fund (1985), 138 Ill.App.3d 206, 210, 92 Ill.Dec. 825, 425 N.E.2d 871, appeal denied, that the date of suspension of duty or retirement referred to in section 3-114.1 was for the purpose of determining the amount of a disability pension and the fact of disability; it does not

establish the date upon which pension payments must commence. In this case, plaintiff continued to receive full pay until November 10, 1985, and his pension commenced the next day. Section 3-114.1 may not be interpreted to permit plaintiff to receive both salary and pension for the period from August 1, 1985 through November 10, 1985."

Since this case affirmed a rule the Board had in place, I'm sure that some could argue that under its rule making powers, the Board could proscribe a rule that makes the effective date of disability payments the date of the decision. For the rationale stated above, I do not believe that would be appropriate and is a rule that could be used to abuse the process. The rule as affirmed by the Appellate Court in Olson does not allow for such abuse and is simple to apply in every instance.

The rule is simply as follows: the effective date of disability payments is the later of two dates: the date of application or the date the officer last received compensation in any form from the municipality. In the example described above, the effective date of payment would be whenever the officer's sick pay and personal pay became exhausted or the Continuing Comp payments ceased, whichever was later, since they came after the officer's date of application. The amount of payment would be adjusted to reflect a change of salary attached to rank with an effective date prior to the pensioner's last day of service.

Benefits Law Bulletin

EEOC Issues Regulation Affecting Retiree Health Benefits

On December 26, 2007, the EEOC finalized a regulation providing that employers may reduce or eliminate retiree health benefits for retirees or their spouses or dependents as those individuals become Medicare-eligible without violating the Age Discrimination in Employment Act (ADEA). This common practice has been under scrutiny for the last several years and challenged by various groups advocating for older Americans. Initially, the Third Circuit Court of Appeals held that an employer would violate ADEA by providing lesser health coverage to Medicare-eligible retirees than it does to retirees not yet eligible for

Medicare. In response, the EEOC crafted a regulation which provided that the practice does not violate ADEA. It reasoned that affording flexibility to employers on this issue would serve to retain the existing incentives for employers to provide health benefits to retirees. In contrast, and particularly in light of the rising cost of providing health benefits, prohibiting such practices might have caused employers to discontinue offering health benefits to retirees since employers are generally not required to provide such benefits. The EEOC was initially enjoined from making the regulation final after an injunction was sought in court by ad-

vocacy groups. The injunction has since been reversed, and the regulation is now finalized. Importantly, this regulation has no effect on requirements governing benefits provided to active employees. In addition, courts may reach a conclusion different than that of the EEOC. Employers who wish to implement a practice which provides for a different level of health benefits for retirees who are Medicare-eligible are still strongly encouraged to review such a practice to ensure compliance with other applicable laws as well as any collective bargaining-related implications it may have.

Social Security's Quick Disability Determination Process Begins in Illinois

New Process Will Accelerate Benefits to Those Deemed Clearly Disabled

Michael J. Astrue, Commissioner of Social Security, announced that the Social Security Administration has implemented its new quick disability determination (QDD) process in Illinois's disability determination services. Under QDD, a predictive model analyzes specific elements of data within the electronic claims file to identify claims where there is a high potential that the claimant is disabled and where evidence of the person's allegations can be quickly and easily obtained.

"The quick disability determination process has been very successful and efficient. I am happy to say it will now help people filing for disability bene-

fits in Illinois," Commissioner Astrue said. "This is a very important step we are taking at Social Security to improve our disability programs."

The Social Security Administration currently receives more than 94,000 new disability cases each year in Illinois. In New England, where the QDD process was tested, about three percent of all new cases were identified as QDD cases. These cases were processed in an average of 11 days. Since the model does not yet incorporate as many diseases as it can, Commissioner Astrue has committed to expanding the number of cases that can be identified as a QDD case while main-

taining the same level of accuracy.

"The length of time many people wait for a disability decision is unacceptable," Commissioner Astrue said. "I am committed to a process that is as fair and Speedy as possible. While there is no single magic bullet, with better systems, better business processes and better ways of fast-tracking targeted cases, we can greatly improve the service we provide to the citizens of Illinois."

For more information about Social Security's disability programs, go to www.socialsecurity.gov/disability.

DOES YOUR MUNICIPALITY HAVE A PENSION PROBLEM? (IPPFA's Response to IML)

(Another Critical Commentary)

Once again, the Illinois Public Pension Fund Association (IPPFA) feels required to critically comment on the continuing fallacious attacks being made by the Illinois Municipal League (IML) in what appears to be an all out crusade against the Downstate Police and Fire Pension systems. In the interest of simplicity, we will present our responses to their "bullet points" in the order of their webpage. Their current webpage, "The IML Public Policy Pension Page" claims—

IML—"to serve as a leading resource to educate municipal officials, state leaders and the residents of Illinois' cities, villages and towns about the looming challenge to achieve and maintain financial stability within Illinois' municipal public safety pension funds."

IPPFA—*If, in fact, this is their overall purpose, we question the accuracy of their reporting. The IML web page makes no mention of any contrary views. Their research is suspect and, we feel that their conclusions are unsupported. Additionally, as will be shown herein, many of their statements are patently false. The Downstate Police and Fire Pension systems are, in fact, some of the most well funded pension systems in the state. If they were properly funded by the municipalities in accor-*

dance with the State Statutes, their funding levels would far exceed the averages of any state pension fund except the IMRF.

IML—Current benefit levels are guaranteed by the Illinois Constitution and cannot be reduced. Pension benefits awarded by the General Assembly must therefore be funded using available local revenues.

IPPFA-Comment: *This statement is correct and it should be emphasized that the statement is true for all public municipal pension funds in every State of the union. This is not unique to the Illinois Downstate System nor to the IMRF, which covers all municipal employees except public safety officers.*

IML—Municipal officials are finding it difficult to pay for the growing pension debt, within existing budgets. State statute prevents many municipalities from levying for adequate revenues to contribute toward their pension liabilities.

IPPFA-Comment: *As stated in our original commentary to the IML Report— "We are not unsympathetic to the burden passed on to taxpayers for properly funding the municipal pension programs. Managing a municipality is a difficult task re-*

quiring trade-offs within the budget. However, strong management requires recognition that pension funding should occur while the pensions are being earned and not passed off to future generations of taxpayers. The system for proper funding of municipal pension plans was altered in 1993 when the contribution methodology was changed at the behest of the municipalities to lower their current costs. It is now unseemly for these same municipalities to raise issues, which were anticipated, and to attempt to blame the system for performing exactly as anticipated. "... Interestingly, there has never been a case where a municipality has failed to provide the required municipal contribution to the IMRF, the plan that the municipal employees look to for their own pension benefits!

IML—Municipal governments have seen the fees they pay the state for pension regulatory services increase dramatically while the overall regulatory staffing and service levels have declined. Inadequate regulation of billions of pension dollars is a ticking time bomb.

IPPFA-Comment: *We are not quite sure that the IML is presenting a critical statement regarding the Downstate Police and Fire Pension systems.*

DOES YOUR MUNICIPALITY HAVE A PENSION PROBLEM? (IPPFA's Response to IML) {continued from page four}

We do concur with their concern over the pension fund fees. While the police and fire fund fees to regulate them have increased and most of the moneys are being redirected into other state services, we agree that those fees need to be used to help regulate the funds.

IML—The State of Illinois publishes an annual study of the fiscal conditions of all state and local pension funds except two—the downstate and suburban police and firefighter pension funds. This neglect by the state of two local multi-billion dollar pension systems prompted the IML to undertake its own study to inform municipal officials, legislators and the public about the financial condition of these systems.

IPPFA-Comment: Again, we are not quite sure that the IML is presenting a critical statement regarding the Downstate Police and Fire Pension systems, but we do take some issue with the implications of the statement regarding disclosure of the fiscal conditions of the Downstate Pension funds. Perhaps the IML is unaware of the contents of the biennial report prepared in compliance with 40 ILCS 5/1A-108 of the Illinois Pension Code and most recently presented at:

http://www.idfpr.com/DOI/pension/Reports/pension_biennial_report_2005.pdf

IML—Unlike the Illinois Workers' Compensation Act, the downstate and suburban police and firefighter pension systems do not include provisions to protect against fraudulent disability claims. Municipalities are not even given statutory authority to be involved in pension decisions and therefore have no standing before their own pension boards. A dangerous wall of separation has been constructed between municipalities and their pension funds with only a mail slot big enough to accept municipal pension payments remaining.

IPPFA-Comment: The first point regards the allegations that there are no protections to protect against fraudulent disability claims. Quite the contrary, the Downstate Police and Fire Pension Statutes contain specific provisions regarding the award and continuation of disability pensions. Generally, continuity requires an annual sworn statement by the officer and annual reports by a physician selected by the Board of Trustees. As you are aware in Hare v. Village of Stickney, (citation omitted), the 1st District Appellate Court held that a municipality has the ability to seek intervention in a dis-

ability proceeding, however it is within the sound discretion of the pension board to allow such intervention. Furthermore, the statement that the municipality is not provided statutory authority to be involved in pension decisions is patently false. The municipality is given statutory authority to appoint 40% of the independent Board of Trustees for each pension system. Additionally, both the police and firefighter statutes provide for a complete offset of pension disability benefits by the disability payments provided under the Illinois Workers' Compensation Act.

IML—The downstate and suburban police and firefighter pension funds have no statutory provisions protecting funds from illicit arrangements whereby pension fund trustees personally profit from decisions made by money managers hired to provide investment advice.

The downstate and suburban police and firefighter pension funds have no statutory provisions establishing minimum registration and disclosure standards for key professional and contractual services they contract with to advise them.

DOES YOUR MUNICIPALITY HAVE A PENSION PROBLEM? (IPPFA's Response to IML) {continued from page five}

IPPFA-Comment: The above two statements are again completely false. We direct the IML to the State statutory authority contained in 40 ILCS 5/1, 40 ILCS 5/1A and 40 ILCS 5/22A for specific regulations concerning ALL PENSION FUNDS IN THE STATE OF ILLINOIS as well as the general regulatory federal and Fire Pension funds. It is apparent that no one from IML has read Article I of the Illinois Pension Code §5/1-110(b) which, 1) prohibits a pension fund trustee from dealing with the assets of the retirement system for his or her own interests; 2) prohibits a pension fund trustee from acting on behalf of a party whose interests are adverse to the assets of the pension fund; 3) prohibits a pension fund trustee from receiving any consideration from any party dealing with retirement the system in connection with the assets of the pension fund. A violation by a pension fund trustee could result in liability for breach of his or fiduciary duty, which could cause that trustee to be personally liable in a civil action brought against that trustee.

IML---Legislators who vote on legislation proposing to increase police and fire pension benefits are provided inadequate information regarding how pension bills will fi-

nancially impact municipalities and taxpayers. They are only provided with a statewide "blended average" derived from old data that fails to produce any useful information on how pension legislation might impact individual municipalities.

IPPFA-Comment: It is difficult to comment regarding what is "inadequate information"; however, the IPPFA and other representative public safety organizations and municipal organizations, including, we hope, the IML, are more than willing to provide testimony, statistics, and other pertinent information to our legislators at their request. Such information is also, of course, a matter of public record.

IML---Municipal taxpayers are kept in the dark regarding the financial decisions and benefit awards made by their downstate and suburban police and fire pension funds.

IPPFA-Comment: With the passage of the Illinois Open Meetings Act on July 11, 1957, we are hard pressed to believe that any municipal taxpayer who wishes to be aware of the financial decisions and benefit awards made by their downstate and suburban police and fire pension funds can be "kept in the dark". Hearings concerning disability pensions are public

hearings and open to the public. Although the decisions are made in closed session, just like the closed sessions conducted by municipal officials, for certain matters, an audio or video verbatim transcript must be kept. Once a vote is taken, every pension board prepares a written decision that sets forth the reasons why it rendered a certain decision.

We close with the same comments made in our earlier critical analysis of the IML report—

... The Illinois Public Pension Fund Association (IPPFA) and its membership offer educational programs and support proposed legislation, which is actuarially cost neutral. Through the IPPFA Certified Trustee Program offered in part through Northern Illinois University, over 600 Pension Trustees including police officers, firefighters and municipal appointees, as well as Finance Officers and City Treasurers, have completed over 30 hours of training in pension fund management and operation, including modules on fiduciary responsibility, legal, actuarial and administrative procedures and investment education.

CUBS BASEBALL

SAVE THE DATE!!

CUBS BASEBALL

THE IPPFA INVESTMENT SEMINAR (PENSION TRUSTEES)-CUBS ROOFTOP EVENT

WEDNESDAY, JULY 9, 2008

SEMINAR AT 6:00-7:00 PM / GAME AT 7:05-10:00 PM

CUBS VS REDS

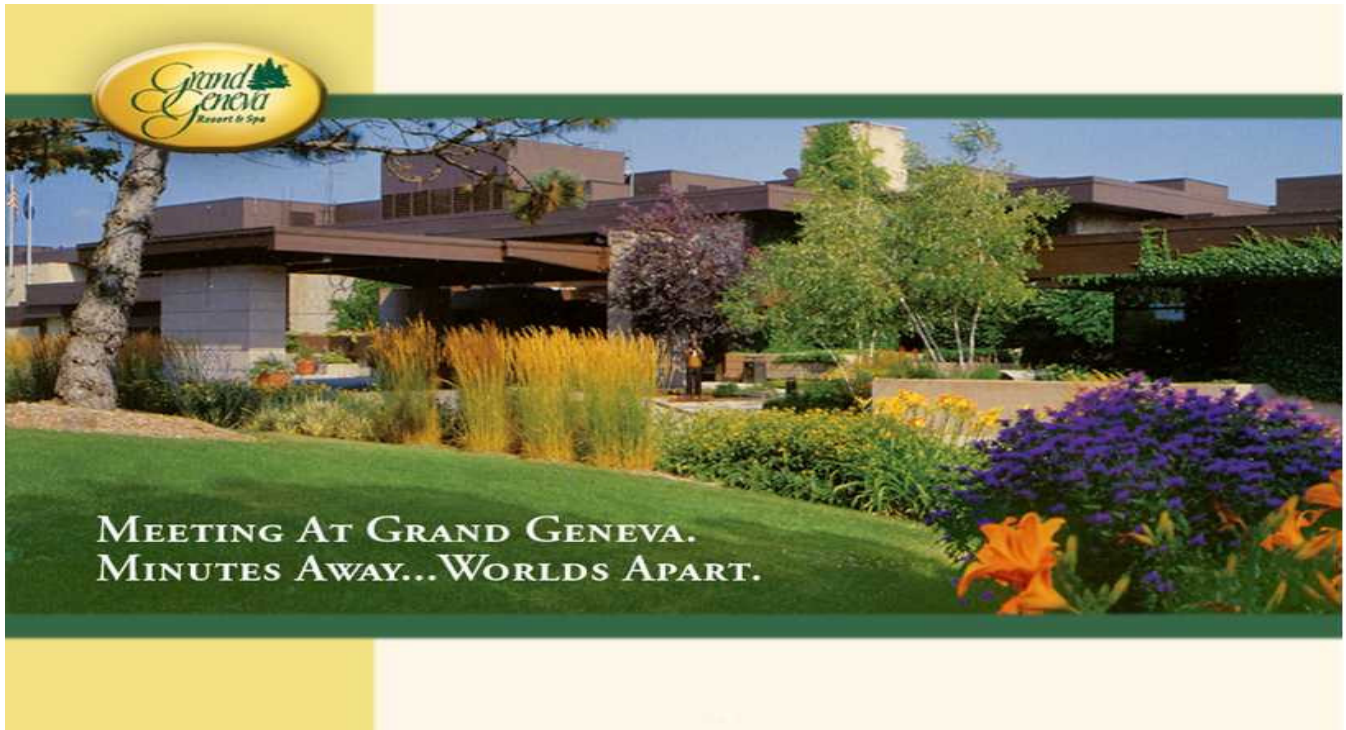
(MUST BE AT LEAST 18 YEARS OF AGE)

CONTACT IPPFA via email ippfa@aol.com

With the name(s) of those attending & a contact number

ATTENDANCE IS LIMITED TO FIRST 200 *Must be received by June 19th.*





IPPFA Midwest Training Conference

October 14-17, 2008

At the Grand Geneva Resort and Spa, Lake Geneva, Wisconsin

Golf Outing on Tuesday October 14, 2008

Please join us for the latest Educational Information

for all Public Pension Fund Trustees

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More information about IPPFA's ATC

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MAKE YOUR HOTEL RESERVATIONS NOW

800-558-3417 Or 262-248-8811

IPPFA Conference room rate is \$134.00 + tax + resort fee

Advise them you are with the IPPFA Public Pension Conference.

LEGISLATIVE UPDATES

Public Act 095-0025

HB0166 Enrolled

LR095 04035 WGH 24072 b

AN ACT concerning human rights.

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

Section 5. The Illinois Human Rights Act is amended by changing Section 2-102 as follows:

(775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

Sec. 2-102. Civil Rights Violations—Employment. It is a civil rights violation:

(A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status ...

(H) Pregnancy; peace officer and fire fighters. For a public employer to refuse to temporarily transfer a pregnant female peace officer or pregnant female fire fighter to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advise of her physician, where that transfer can be reasonably accommodated. For the purposes of this subdivision (H), “peace officer” and “fire fighter” have the meanings ascribed to those terms in Section 3 of the Illinois Public Labor Relations Act.

It is not a civil rights violation for an employer to take any action that is required by Section 1324a of Title 8 of the United States Code, as now or hereafter amended.

(Source: P.A. 93-217, eff. 1-1-04)

Effective Date: 1/1/2008

Public Act 095-0184

HB0012 Enrolled

AN ACT concerning local government.

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

Section 5. The Local Government Employees Benefits Continuation Act is amended by changing Section 3 as follows:

(Continued on page 10)

IPPFA

CERTIFIED TRUSTEE PROGRAM

Preparing pension fund trustees for tomorrow

We are now accepting registrations for Program 20

The dates are August 21, September 25, October 30 and November 20, 2008.

The 32-hour program is offered twice per year in four eight-hour modules, with classes beginning either in January through April or August through December each year, 8:00am to 4:00pm on Thursdays, approximately one month apart. Classes are held at the Multi-University Center, 1010 Jorie Blvd. Oakbrook, IL. All modules must be completed within a twelve month period. The cost of the program is \$650.00 per participant and includes all instructions, a notebook, all textbooks, and related handout material. The Illinois Department of Financial & Professional Regulation, Division of Insurance has approved this fee as a "necessary pension fund expense" under the Illinois Pension Code.

MODULE 1 AUGUST 21, 2008

FIDUCIARY FUNDAMENTALS

FIDUCIARY DUTIES OF PUBLIC PENSION FUND TRUSTEES
FUNDAMENTALS OF PENSION FUND INVESTING

MODULE 2 SEPTEMBER 25, 2008

ACTUARIAL/MEDICAL

BASIC FUNDING CONCEPTS
UNDERSTANDING MEDICAL AND DISABILITY ISSUES

MODULE 3 OCTOBER 30, 2008

INVESTMENTS

FUNDAMENTALS OF FIXED INCOME INVESTING
FUNDAMENTALS OF EQUITY INVESTING

MODULE 4 NOVEMBER 20, 2008

LEGAL/ADMINISTRATIVE PRACTICES

LEGAL ISSUES AND ETHICS FOR PENSION FUND TRUSTEES
UNDERSTANDING THE ADMINISTRATION OF PENSION BENEFITS

For more information, contact the IPPFA, 40 DuPage Court, Suite 304, Elgin, Illinois 60120 Phone 847-608-6014 Fax 847-608-6019 or check our website at www.ippfa.org for up to date class schedules and downloadable registration form or use the attached registration form.

Please print

Name _____ Police / Fire _____

Address _____ City, Zip _____

Phone # _____ - _____ FAX # _____ - _____

E-mail _____

This course must be taken in its entirety and is not available in individual modules. Each participant must successfully complete module one before selecting any of the three remaining modules and also must complete the four modules of instruction within a twelve month period.

Enclose a check for \$650 payable to the IPPFA with this form
and mail to: IPPFA at 40 DuPage Court, Suite 304, Elgin, IL 60120

These dates are subject to change.

LEGISLATIVE UPDATE (Continued)

(Continued from page 8)

(Note: All bold and underline sentences and/or words were removed from the Act)

(50 ILCS 140/3) (from Ch. 85, par. 7653)

Sec. 3. Home rule. A home rule unit, **other than any home rule unit having a population of 1,000,000 or more inhabitants,** may not limit or restrict the right of any employee referred to in Section 2 to continue receiving and accruing regular compensation, health insurance and other benefits at at least the level required by this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units, **other than any home rule unit having a population of 1,000,000 or more inhabitants,** of powers and functions exercised by the State.

(Source: P.A. 87-631.)

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

Effective Date: 8/16/2007

Public Act 095-0142

HB1919 Enrolled

LRB095 07176 HLH 27308 b

AN ACT concerning government.

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

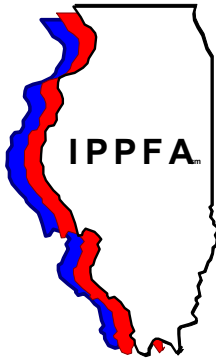
Section 5. The Local Governmental Employees Political Rights Act is amended by changing Section 12 as follows:

(50 ILCS 135/12)

Sec.12. Elective and appointed office.

(Continued on page 11)

IPPFA REMEMBRANCE FUND FOURTH ANNUAL GOLF OUTING 2008



White Pines Golf Club

500 Jefferson
Bensenville, IL.
(York Rd. & Jefferson)
(630) 766-0304



DATE & TIME

Thursday, May 22, 2008

10:00 AM Shotgun Start

For more information call:

(312) 332-4428



EVENT LINE-UP

9:00...Check-in Begins

10:00..Shotgun Tournament

3:30..Cash Bar

4:30..Dinner



Make your reservation now!
DEADLINE IS MAY 15, 2008

LEGISLATIVE UPDATE (Continued)

(a) A member of any fire department or fire protection district may:

(1) be a candidate for elective public office and serve in that public office if elected;

(2) be appointed to any public office and serve in that public office if appointed;

and (3) as long as the member is not in uniform and not on duty, solicit votes and campaign funds and challenge voters for the public office for which the member is a candidate.

(b) A fire fighter who is elected to the Illinois General Assembly shall, upon written application to the employer, be granted a leave of absence without compensation during his or her term of office. (Source : P.A. 94-316, eff. 7-25-05)

Effective Date: 8/13/2007

APRIL 2008
IPPFA NEWSLETTER

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ILLINOIS PUBLIC PENSION FUND ASSOCIATION

40 DUPAGE COURT
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