

AN ACT concerning public employee benefits.

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

Section 5. The Illinois Pension Code is amended by changing Sections 3-109.1, 3-124.1, and 7-109 and by adding Section 3-109.4 as follows:

(40 ILCS 5/3-109.1) (from Ch. 108 1/2, par. 3-109.1)

Sec. 3-109.1. Chief of police.

(a) Except as provided in subsection (a-5), beginning  
~~Beginning~~ January 1, 1990, any person who is employed as the chief of police of a "participating municipality" as defined in Section 7-106 of this Code, may elect to participate in the Illinois Municipal Retirement Fund rather than in a fund created under this Article 3. Except as provided in subsection (b), this election shall be irrevocable, and shall be filed in writing with the Board of the Illinois Municipal Retirement Fund.

(a-5) On or after January 1, 2019, a person may not elect to participate in the Illinois Municipal Retirement Fund with respect to his or her employment as the chief of police of a participating municipality, unless that person became a participating employee in the Illinois Municipal Retirement Fund before January 1, 2019.

(b) Until January 1, 1999, a chief of police who has elected under this Section to participate in IMRF rather than a fund created under this Article may elect to rescind that election and transfer his or her participation to the police pension fund established under this Article by the employing municipality. The chief must notify the boards of trustees of both funds in writing of his or her decision to rescind the election and transfer participation. A chief of police who transfers participation under this subsection (b) shall not be deemed ineligible to participate in the police pension fund by reason of having failed to apply within the 3-month period specified in Section 3-106.

(Source: P.A. 90-460, eff. 8-17-97.)

(40 ILCS 5/3-109.4 new)

Sec. 3-109.4. Defined contribution plan for certain police officers.

(a) Each municipality shall establish a defined contribution plan that aggregates police officer and employer contributions in individual accounts used for retirement. The defined contribution plan, including both police officer and employer contributions, established by the municipality must, at a minimum: meet the safe harbor provisions of the Internal Revenue Code of 1986, as amended; be a qualified plan under the Internal Revenue Code of 1986, as amended; and comply with all other applicable laws, rules, and regulations. Contributions

shall vest immediately upon deposit in the police officer's account.

A police officer who participates in the defined contribution plan under this Section may not earn creditable service or otherwise participate in the defined benefit plan offered by his or her employing municipality, except as an annuitant in another fund or as a survivor, while he or she is a participant in the defined contribution plan. The defined contribution plan under this Section shall not be construed to be a pension, annuity, or other defined benefit under this Code.

(b) If a police officer who has more than 10 years of creditable service in a fund enters active service with a different municipality, he or she may elect to participate in the defined contribution plan under this Section in lieu of the defined benefit plan.

A police officer who has elected under this subsection to participate in the defined contribution plan may, in writing, rescind that election in accordance with the rules of the board. Any employer contributions, and the earnings thereon, shall remain vested in the police officer's account. A police officer who rescinds the election may begin participating in the defined benefit plan on the first day of the month following the rescission.

(c) As used in this Section, "defined benefit plan" means the retirement plan available to police officers under this

Article who do not participate in the defined contribution plan under this Section.

(40 ILCS 5/3-124.1) (from Ch. 108 1/2, par. 3-124.1)

Sec. 3-124.1. Re-entry into active service.

(a) If a police officer who is receiving pension payments other than as provided in Section 3-109.3 re-enters active service, pension payment shall be suspended while he or she is in service. When he or she again retires, pension payments shall be resumed. If the police officer remains in service after re-entry for a period of less than 5 years, the pension shall be the same as upon first retirement. If the officer's service after re-entry is at least 5 years and the officer makes the required contributions during the period of re-entry, his or her pension shall be recomputed by taking into account the additional period of service and salary.

(b) If a police officer who first becomes a member on or after January 1, 2019 is receiving pension payments (other than as provided in Section 3-109.3) and re-enters active service with any municipality that has established a pension fund under this Article, that police officer may continue to receive pension payments while he or she is in active service, but shall only participate in a defined contribution plan established by the municipality pursuant to Section 3-109.4 and may not establish creditable service in the pension fund established by that municipality or have his or her pension

recomputed.

(Source: P.A. 91-939, eff. 2-1-01.)

(40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

Sec. 7-109. Employee.

(1) "Employee" means any person who:

(a) 1. Receives earnings as payment for the performance of personal services or official duties out of the general fund of a municipality, or out of any special fund or funds controlled by a municipality, or by an instrumentality thereof, or a participating instrumentality, including, in counties, the fees or earnings of any county fee office; and

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or any instrumentality thereof, or a participating instrumentality, including aldermen, county supervisors and other persons (excepting those employed as independent contractors) who are paid compensation, fees, allowances or other emolument for official duties, and, in counties, the several county fee offices.

(b) Serves as a township treasurer appointed under the School Code, as heretofore or hereafter amended, and who receives for such services regular compensation as distinguished from per diem compensation, and any regular

employee in the office of any township treasurer whether or not his earnings are paid from the income of the permanent township fund or from funds subject to distribution to the several school districts and parts of school districts as provided in the School Code, or from both such sources; or is the chief executive officer, chief educational officer, chief fiscal officer, or other employee of a Financial Oversight Panel established pursuant to Article 1H of the School Code, other than a superintendent or certified school business official, except that such person shall not be treated as an employee under this Section if that person has negotiated with the Financial Oversight Panel, in conjunction with the school district, a contractual agreement for exclusion from this Section.

(c) Holds an elective office in a municipality, instrumentality thereof or participating instrumentality.

(2) "Employee" does not include persons who:

(a) Are eligible for inclusion under any of the following laws:

1. "An Act in relation to an Illinois State Teachers' Pension and Retirement Fund", approved May 27, 1915, as amended;

2. Articles 15 and 16 of this Code.

However, such persons shall be included as employees to the extent of earnings that are not eligible for inclusion under the foregoing laws for services not of an

instructional nature of any kind.

However, any member of the armed forces who is employed as a teacher of subjects in the Reserve Officers Training Corps of any school and who is not certified under the law governing the certification of teachers shall be included as an employee.

(b) Are designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties, except that when such persons are the heads of the police or fire department and are not eligible to be included within any such pension fund, they shall be included within this Article; provided, that such persons shall not be excluded to the extent of concurrent service and earnings not designated as being for police or fire protection duties. However, (i) any head of a police department who was a participant under this Article immediately before October 1, 1977 and did not elect, under Section 3-109 of this Act, to participate in a police pension fund shall be an "employee", and (ii) any chief of police who became a participating employee under this Article before January 1, 2019 and who elects to participate in this Fund under Section 3-109.1 of this Code, regardless of whether such person continues to be employed as chief of police or is employed in some other rank or capacity within the police

department, shall be an employee under this Article for so long as such person is employed to perform police duties by a participating municipality and has not lawfully rescinded that election.

(c) Are contributors to or eligible to contribute to a Taft-Hartley pension plan to which the participating municipality is required to contribute as the person's employer based on earnings from the municipality. Nothing in this paragraph shall affect service credit or creditable service for any period of service prior to the effective date of this amendatory Act of the 98th General Assembly, and this paragraph shall not apply to individuals who are participating in the Fund prior to the effective date of this amendatory Act of the 98th General Assembly.

(d) Become an employee of any of the following participating instrumentalities on or after the effective date of this amendatory Act of the 99th General Assembly: the Illinois Municipal League; the Illinois Association of Park Districts; the Illinois Supervisors, County Commissioners and Superintendents of Highways Association; an association, or not-for-profit corporation, membership in which is authorized under Section 85-15 of the Township Code; the United Counties Council; or the Will County Governmental League.

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from



general or special funds of a county for performance of personal services or official duties within the territorial limits of the county, are employees of the county (unless excluded by subsection (2) of this Section) notwithstanding that they may be appointed by and are subject to the direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. This finding and this amendatory Act shall apply to all such employees from the date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund.

(Source: P.A. 98-712, eff. 7-16-14; 99-830, eff. 1-1-17.)

Section 90. The State Mandates Act is amended by adding Section 8.41 as follows:

(30 ILCS 805/8.41 new)

Sec. 8.41. Exempt mandate. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of

Public Act 100-0281

HB0418 Enrolled

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the 100th General Assembly.

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