



Sen. Pamela J. Althoff

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1 AMENDMENT TO SENATE BILL 3119

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3119 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by  
5 changing Section 7-109 as follows:

6 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

7 Sec. 7-109. Employee.

8 (1) "Employee" means any person who:

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

16 2. Under the usual common law rules applicable in

1 determining the employer-employee relationship, has the  
2 status of an employee with a municipality, or any  
3 instrumentality thereof, or a participating  
4 instrumentality, including aldermen, county supervisors  
5 and other persons (excepting those employed as independent  
6 contractors) who are paid compensation, fees, allowances  
7 or other emolument for official duties, and, in counties,  
8 the several county fee offices.

9 (b) Serves as a township treasurer appointed under the  
10 School Code, as heretofore or hereafter amended, and who  
11 receives for such services regular compensation as  
12 distinguished from per diem compensation, and any regular  
13 employee in the office of any township treasurer whether or  
14 not his earnings are paid from the income of the permanent  
15 township fund or from funds subject to distribution to the  
16 several school districts and parts of school districts as  
17 provided in the School Code, or from both such sources; or  
18 is the chief executive officer, chief educational officer,  
19 chief fiscal officer, or other employee of a Financial  
20 Oversight Panel established pursuant to Article 1H of the  
21 School Code, other than a superintendent or certified  
22 school business official, except that such person shall not  
23 be treated as an employee under this Section if that person  
24 has negotiated with the Financial Oversight Panel, in  
25 conjunction with the school district, a contractual  
26 agreement for exclusion from this Section.

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

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

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

6 1. "An Act in relation to an Illinois State  
7 Teachers' Pension and Retirement Fund", approved May  
8 27, 1915, as amended;

9 2. Articles 15 and 16 of this Code.

10 However, such persons shall be included as employees to  
11 the extent of earnings that are not eligible for inclusion  
12 under the foregoing laws for services not of an  
13 instructional nature of any kind.

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

19 (b) Are designated by the governing body of a  
20 municipality in which a pension fund is required by law to  
21 be established for policemen or firemen, respectively, as  
22 performing police or fire protection duties, except that  
23 when such persons are the heads of the police or fire  
24 department and are not eligible to be included within any  
25 such pension fund, they shall be included within this  
26 Article; provided, that such persons shall not be excluded

1 to the extent of concurrent service and earnings not  
2 designated as being for police or fire protection duties.  
3 However, (i) any head of a police department who was a  
4 participant under this Article immediately before October  
5 1, 1977 and did not elect, under Section 3-109 of this Act,  
6 to participate in a police pension fund shall be an  
7 "employee", and (ii) any chief of police who became a  
8 participating employee under this Article before January  
9 1, 2019 and who elects to participate in this Fund under  
10 Section 3-109.1 of this Code, regardless of whether such  
11 person continues to be employed as chief of police or is  
12 employed in some other rank or capacity within the police  
13 department, shall be an employee under this Article for so  
14 long as such person is employed to perform police duties by  
15 a participating municipality and has not lawfully  
16 rescinded that election.

17 (b-5) Were not participating employees under this  
18 Article before the effective date of this amendatory Act of  
19 the 100th General Assembly and participated as a chief of  
20 police in a fund under Article 3 and return to work in any  
21 capacity with the police department, with any oversight of  
22 the police department, or in an advisory capacity for the  
23 police department with the same municipality with which  
24 that pension was earned, regardless of whether they are  
25 considered an employee of the police department or are  
26 eligible for inclusion in the municipality's Article 3

1       fund.

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

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

22           (3) All persons, including, without limitation, public  
23      defenders and probation officers, who receive earnings from  
24      general or special funds of a county for performance of  
25      personal services or official duties within the territorial  
26      limits of the county, are employees of the county (unless

1 excluded by subsection (2) of this Section) notwithstanding  
2 that they may be appointed by and are subject to the direction  
3 of a person or persons other than a county board or a county  
4 officer. It is hereby established that an employer-employee  
5 relationship under the usual common law rules exists between  
6 such employees and the county paying their salaries by reason  
7 of the fact that the county boards fix their rates of  
8 compensation, appropriate funds for payment of their earnings  
9 and otherwise exercise control over them. This finding and this  
10 amendatory Act shall apply to all such employees from the date  
11 of appointment whether such date is prior to or after the  
12 effective date of this amendatory Act and is intended to  
13 clarify existing law pertaining to their status as  
14 participating employees in the Fund.

15 (Source: P.A. 99-830, eff. 1-1-17; 100-281, eff. 8-24-17.)

16 Section 99. Effective date. This Act takes effect January  
17 1, 2019."