



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2107

Introduced 2/26/2021, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

40 ILCS 5/7-108	from Ch. 108 1/2, par. 7-108
40 ILCS 5/7-109	from Ch. 108 1/2, par. 7-109
40 ILCS 5/22C-118	
30 ILCS 805/8.45 new	

Amends the Illinois Municipal Retirement Fund (IMRF) and the Firefighters' Pension Investment Fund Articles of the Illinois Pension Code. Adds the Firefighters' Pension Investment Fund to the definition of "participating instrumentality". In the definition of "employee", adds an employee of the Firefighters' Pension Investment Fund if he or she elects to participate and excludes members of the Board of Trustees of the Firefighters' Pension Investment Fund in their capacity as members of the Board of Trustees of the Firefighters' Pension Investment Fund. Provides that the Firefighters' Pension Investment Fund shall pay the required employer contributions for personnel who participate in IMRF. Amends the State Mandates Act to require implementation without reimbursement.

LRB102 16153 RPS 21529 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning public employee benefits.

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

4 Section 5. The Illinois Pension Code is amended by
5 changing Sections 7-108, 7-109, and 22C-118 as follows:

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

7 Sec. 7-108. "Participating Instrumentality": (a) A
8 political entity created under the laws of the State of
9 Illinois, without general continuous power to levy taxes, and
10 which is legally separate and distinct from the State of
11 Illinois and any municipality and whose employees by reason of
12 their relation to such political entity are not employees of
13 the State of Illinois or a municipality.

14 (b) A not-for-profit organization, which is incorporated
15 under the laws of the State of Illinois, or an association,
16 membership in which is limited to municipalities or limited to
17 townships and authorized by statute.

18 (c) The Firefighters' Pension Investment Fund under
19 Article 22C.

20 (Source: P.A. 77-1615.)

21 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

22 Sec. 7-109. Employee.

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

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

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

18 (b) Serves as a township treasurer appointed under the
19 School Code, as heretofore or hereafter amended, and who
20 receives for such services regular compensation as
21 distinguished from per diem compensation, and any regular
22 employee in the office of any township treasurer whether
23 or not his earnings are paid from the income of the
24 permanent township fund or from funds subject to
25 distribution to the several school districts and parts of
26 school districts as provided in the School Code, or from

1 both such sources; or is the chief executive officer,
2 chief educational officer, chief fiscal officer, or other
3 employee of a Financial Oversight Panel established
4 pursuant to Article 1H of the School Code, other than a
5 superintendent or certified school business official,
6 except that such person shall not be treated as an
7 employee under this Section if that person has negotiated
8 with the Financial Oversight Panel, in conjunction with
9 the school district, a contractual agreement for exclusion
10 from this Section.

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

13 (d) Is an employee of the Firefighters' Pension
14 Investment Fund under Article 22C if he or she elects to
15 participate under this Article.

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

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

19 1. "An Act in relation to an Illinois State
20 Teachers' Pension and Retirement Fund", approved May
21 27, 1915, as amended;

22 2. Articles 15 and 16 of this Code.

23 However, such persons shall be included as employees
24 to the extent of earnings that are not eligible for
25 inclusion under the foregoing laws for services not of an
26 instructional nature of any kind.

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

6 (b) Are designated by the governing body of a
7 municipality in which a pension fund is required by law to
8 be established for policemen or firemen, respectively, as
9 performing police or fire protection duties, except that
10 when such persons are the heads of the police or fire
11 department and are not eligible to be included within any
12 such pension fund, they shall be included within this
13 Article; provided, that such persons shall not be excluded
14 to the extent of concurrent service and earnings not
15 designated as being for police or fire protection duties.
16 However, (i) any head of a police department who was a
17 participant under this Article immediately before October
18 1, 1977 and did not elect, under Section 3-109 of this Act,
19 to participate in a police pension fund shall be an
20 "employee", and (ii) any chief of police who became a
21 participating employee under this Article before January
22 1, 2019 and who elects to participate in this Fund under
23 Section 3-109.1 of this Code, regardless of whether such
24 person continues to be employed as chief of police or is
25 employed in some other rank or capacity within the police
26 department, shall be an employee under this Article for so

1 long as such person is employed to perform police duties
2 by a participating municipality and has not lawfully
3 rescinded that election.

4 (b-5) Were not participating employees under this
5 Article before the effective date of this amendatory Act
6 of the 100th General Assembly and participated as a chief
7 of police in a fund under Article 3 and return to work in
8 any capacity with the police department, with any
9 oversight of the police department, or in an advisory
10 capacity for the police department with the same
11 municipality with which that pension was earned,
12 regardless of whether they are considered an employee of
13 the police department or are eligible for inclusion in the
14 municipality's Article 3 fund.

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

26 (d) Become an employee of any of the following

1 participating instrumentalities on or after the effective
2 date of this amendatory Act of the 99th General Assembly:
3 the Illinois Municipal League; the Illinois Association of
4 Park Districts; the Illinois Supervisors, County
5 Commissioners and Superintendents of Highways Association;
6 an association, or not-for-profit corporation, membership
7 in which is authorized under Section 85-15 of the Township
8 Code; the United Counties Council; or the Will County
9 Governmental League.

10 (e) Are members of the Board of Trustees of the
11 Firefighters' Pension Investment Fund under Article 22C in
12 their capacity as members of the Board of Trustees of the
13 Firefighters' Pension Investment Fund.

14 (3) All persons, including, without limitation, public
15 defenders and probation officers, who receive earnings from
16 general or special funds of a county for performance of
17 personal services or official duties within the territorial
18 limits of the county, are employees of the county (unless
19 excluded by subsection (2) of this Section) notwithstanding
20 that they may be appointed by and are subject to the direction
21 of a person or persons other than a county board or a county
22 officer. It is hereby established that an employer-employee
23 relationship under the usual common law rules exists between
24 such employees and the county paying their salaries by reason
25 of the fact that the county boards fix their rates of
26 compensation, appropriate funds for payment of their earnings

1 and otherwise exercise control over them. This finding and
2 this amendatory Act shall apply to all such employees from the
3 date of appointment whether such date is prior to or after the
4 effective date of this amendatory Act and is intended to
5 clarify existing law pertaining to their status as
6 participating employees in the Fund.

7 (Source: P.A. 99-830, eff. 1-1-17; 100-281, eff. 8-24-17;
8 100-1097, eff. 8-26-18.)

9 (40 ILCS 5/22C-118)

10 Sec. 22C-118. Operation and administration of the Fund.

11 (a) The operation and administration of the Fund shall be
12 managed by an executive director. No later than 2 months after
13 the transition board is appointed or as soon thereafter as may
14 be practicable, the transition board shall appoint an interim
15 executive director who shall serve until a permanent executive
16 director is appointed by the board, with such appointment to
17 be made no later than 6 months after the end of the transition
18 period. The executive director shall act subject to and under
19 the supervision of the board and the board shall fix the
20 compensation of the executive director.

21 (b) The board may appoint one or more custodians to
22 facilitate the transfer of pension fund assets during the
23 transition period, and subsequently to provide custodial and
24 related fiduciary services on behalf of the board, and enter
25 into contracts for such services. The board may also appoint

1 external legal counsel and an independent auditing firm and
2 may appoint investment advisors and other consultants as it
3 determines to be appropriate and enter into contracts for such
4 services. With approval of the board, the executive director
5 may retain such other consultants, advisors, fiduciaries, and
6 service providers as may be desirable and enter into contracts
7 for such services.

8 (c) The board shall separately calculate account balances
9 for each participating pension fund. The operations and
10 financial condition of each participating pension fund account
11 shall not affect the account balance of any other
12 participating pension fund. Further, investment returns earned
13 by the Fund shall be allocated and distributed pro rata among
14 each participating pension fund account in accordance with the
15 value of the pension fund assets attributable to each fund.

16 (d) With approval of the board, the executive director may
17 employ such personnel, professional or clerical, as may be
18 desirable and fix their compensation. The appointment and
19 compensation of the personnel, including the executive
20 director, shall not be subject to the Personnel Code. The
21 required employer contributions for personnel who participate
22 in the Illinois Municipal Retirement Fund under Article 7
23 shall be paid for by the Firefighters' Pension Investment
24 Fund.

25 (e) The board shall annually adopt a budget to support its
26 operations and administration. The board shall apply moneys

1 derived from the pension fund assets transferred and under its
2 control to pay the costs and expenses incurred in the
3 operation and administration of the Fund. The board shall from
4 time to time transfer moneys and other assets to the
5 participating pension funds as required for the participating
6 pension funds to pay expenses, benefits, and other required
7 payments to beneficiaries in the amounts and at the times
8 prescribed in this Code.

9 (f) The board may exercise any of the powers granted to
10 boards of trustees of pension funds under Sections 1-107 and
11 1-108 of this Code and may by resolution provide for the
12 indemnification of its members and any of its officers,
13 advisors, or employees in a manner consistent with those
14 Sections.

15 (g) An office for meetings of the board and for its
16 administrative personnel shall be established at any suitable
17 place within the State as may be selected by the board. All
18 books and records of the board shall be kept in such office.

19 (h) The board shall contract for a blanket fidelity bond
20 in the penal sum of not less than \$1,000,000 to cover members
21 of the board of trustees, the executive director, and all
22 other employees of the board, conditioned for the faithful
23 performance of the duties of their respective offices, the
24 premium on which shall be paid by the board.

25 (Source: P.A. 101-610, eff. 1-1-20.)

1 Section 90. The State Mandates Act is amended by adding
2 Section 8.45 as follows:

3 (30 ILCS 805/8.45 new)

4 Sec. 8.45. Exempt mandate. Notwithstanding Sections 6 and
5 8 of this Act, no reimbursement by the State is required for
6 the implementation of any mandate created by this amendatory
7 Act of the 102nd General Assembly.