

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 7-132 as follows:

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

7 Sec. 7-108. "Participating Instrumentality"~~.~~⁺

8 (a) A political entity created under the laws of the State
9 of Illinois, without general continuous power to levy taxes,
10 and 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; for the purposes of
14 providing annuities and benefits to its employees, the Police
15 Officers' Pension Investment Fund, as created under Article
16 22B of this Code; and for the purposes of providing annuities
17 and benefits to its employees, the Firefighters' Pension
18 Investment Fund, as created under Article 22C of this Code.

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

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

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

2 Sec. 7-109. Employee.

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

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

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

20 (b) Serves as a township treasurer appointed under the
21 School Code, as heretofore or hereafter amended, and who
22 receives for such services regular compensation as
23 distinguished from per diem compensation, and any regular
24 employee in the office of any township treasurer whether
25 or not his earnings are paid from the income of the

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

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

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, as created under
12 Article 22C of this Code, in their capacity as members of
13 the Board of Trustees of the Firefighters' Pension
14 Investment Fund.

15 (f) Are members of the Board of Trustees of the Police
16 Officers' Pension Investment Fund, as created under
17 Article 22B of this Code, in their capacity as members of
18 the Board of Trustees of the Police Officers' Pension
19 Investment Fund.

20 (3) All persons, including, without limitation, public
21 defenders and probation officers, who receive earnings from
22 general or special funds of a county for performance of
23 personal services or official duties within the territorial
24 limits of the county, are employees of the county (unless
25 excluded by subsection (2) of this Section) notwithstanding
26 that they may be appointed by and are subject to the direction

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

13 (Source: P.A. 99-830, eff. 1-1-17; 100-281, eff. 8-24-17;
14 100-1097, eff. 8-26-18.)

15 (40 ILCS 5/7-132) (from Ch. 108 1/2, par. 7-132)

16 Sec. 7-132. Municipalities, instrumentalities and
17 participating instrumentalities included and effective dates.

18 (A) Municipalities and their instrumentalities.

19 (a) The following described municipalities, but not
20 including any with more than 1,000,000 inhabitants, and the
21 instrumentalities thereof, shall be included within and be
22 subject to this Article beginning upon the effective dates
23 specified by the Board:

24 (1) Except as to the municipalities and

1 instrumentalities thereof specifically excluded under this
2 Article, every county shall be subject to this Article,
3 and all cities, villages and incorporated towns having a
4 population in excess of 5,000 inhabitants as determined by
5 the last preceding decennial or subsequent federal census,
6 shall be subject to this Article following publication of
7 the census by the Bureau of the Census. Within 90 days
8 after publication of the census, the Board shall notify
9 any municipality that has become subject to this Article
10 as a result of that census, and shall provide information
11 to the corporate authorities of the municipality
12 explaining the duties and consequences of participation.
13 The notification shall also include a proposed date upon
14 which participation by the municipality will commence.

15 However, for any city, village or incorporated town
16 that attains a population over 5,000 inhabitants after
17 having provided social security coverage for its employees
18 under the Social Security Enabling Act, participation
19 under this Article shall not be mandatory but may be
20 elected in accordance with subparagraph (3) or (4) of this
21 paragraph (a), whichever is applicable.

22 (2) School districts, other than those specifically
23 excluded under this Article, shall be subject to this
24 Article, without election, with respect to all employees
25 thereof.

26 (3) Towns and all other bodies politic and corporate

1 which are formed by vote of, or are subject to control by,
2 the electors in towns and are located in towns which are
3 not participating municipalities on the effective date of
4 this Act, may become subject to this Article by election
5 pursuant to Section 7-132.1.

6 (4) Any other municipality (together with its
7 instrumentalities), other than those specifically excluded
8 from participation and those described in paragraph (3)
9 above, may elect to be included either by referendum under
10 Section 7-134 or by the adoption of a resolution or
11 ordinance by its governing body. A copy of such resolution
12 or ordinance duly authenticated and certified by the clerk
13 of the municipality or other appropriate official of its
14 governing body shall constitute the required notice to the
15 board of such action.

16 (b) A municipality that is about to begin participation
17 shall submit to the Board an application to participate, in a
18 form acceptable to the Board, not later than 90 days prior to
19 the proposed effective date of participation. The Board shall
20 act upon the application within 90 days, and if it finds that
21 the application is in conformity with its requirements and the
22 requirements of this Article, participation by the applicant
23 shall commence on a date acceptable to the municipality and
24 specified by the Board, but in no event more than one year from
25 the date of application.

26 (c) A participating municipality which succeeds to the

1 functions of a participating municipality which is dissolved
2 or terminates its existence shall assume and be transferred
3 the net accumulation balance in the municipality reserve and
4 the municipality account receivable balance of the terminated
5 municipality.

6 (d) In the case of a Veterans Assistance Commission whose
7 employees were being treated by the Fund on January 1, 1990 as
8 employees of the county served by the Commission, the Fund may
9 continue to treat the employees of the Veterans Assistance
10 Commission as county employees for the purposes of this
11 Article, unless the Commission becomes a participating
12 instrumentality in accordance with subsection (B) of this
13 Section.

14 (B) Participating instrumentalities.

15 (a) The participating instrumentalities designated in
16 paragraph (b) of this subsection shall be included within and
17 be subject to this Article if:

18 (1) an application to participate, in a form
19 acceptable to the Board and adopted by a two-thirds vote
20 of the governing body, is presented to the Board not later
21 than 90 days prior to the proposed effective date; and

22 (2) the Board finds that the application is in
23 conformity with its requirements, that the applicant has
24 reasonable expectation to continue as a political entity
25 for a period of at least 10 years and has the prospective

1 financial capacity to meet its current and future
2 obligations to the Fund, and that the actuarial soundness
3 of the Fund may be reasonably expected to be unimpaired by
4 approval of participation by the applicant.

5 The Board shall notify the applicant of its findings
6 within 90 days after receiving the application, and if the
7 Board approves the application, participation by the applicant
8 shall commence on the effective date specified by the Board.

9 (b) The following participating instrumentalities, so long
10 as they meet the requirements of Section 7-108 and the area
11 served by them or within their jurisdiction is not located
12 entirely within a municipality having more than one million
13 inhabitants, may be included hereunder:

14 i. Township School District Trustees.

15 ii. Multiple County and Consolidated Health
16 Departments created under Division 5-25 of the Counties
17 Code or its predecessor law.

18 iii. Public Building Commissions created under the
19 Public Building Commission Act, and located in counties of
20 less than 1,000,000 inhabitants.

21 iv. A multitype, consolidated or cooperative library
22 system created under the Illinois Library System Act. Any
23 library system created under the Illinois Library System
24 Act that has one or more predecessors that participated in
25 the Fund may participate in the Fund upon application. The
26 Board shall establish procedures for implementing the

1 transfer of rights and obligations from the predecessor
2 system to the successor system.

3 v. Regional Planning Commissions created under
4 Division 5-14 of the Counties Code or its predecessor law.

5 vi. Local Public Housing Authorities created under the
6 Housing Authorities Act, located in counties of less than
7 1,000,000 inhabitants.

8 vii. Illinois Municipal League.

9 viii. Northeastern Illinois Metropolitan Area Planning
10 Commission.

11 ix. Southwestern Illinois Metropolitan Area Planning
12 Commission.

13 x. Illinois Association of Park Districts.

14 xi. Illinois Supervisors, County Commissioners and
15 Superintendents of Highways Association.

16 xii. Tri-City Regional Port District.

17 xiii. An association, or not-for-profit corporation,
18 membership in which is authorized under Section 85-15 of
19 the Township Code.

20 xiv. Drainage Districts operating under the Illinois
21 Drainage Code.

22 xv. Local mass transit districts created under the
23 Local Mass Transit District Act.

24 xvi. Soil and water conservation districts created
25 under the Soil and Water Conservation Districts Law.

26 xvii. Commissions created to provide water supply or

1 sewer services or both under Division 135 or Division 136
2 of Article 11 of the Illinois Municipal Code.

3 xviii. Public water districts created under the Public
4 Water District Act.

5 xix. Veterans Assistance Commissions established under
6 Section 9 of the Military Veterans Assistance Act that
7 serve counties with a population of less than 1,000,000.

8 xx. The governing body of an entity, other than a
9 vocational education cooperative, created under an
10 intergovernmental cooperative agreement established
11 between participating municipalities under the
12 Intergovernmental Cooperation Act, which by the terms of
13 the agreement is the employer of the persons performing
14 services under the agreement under the usual common law
15 rules determining the employer-employee relationship. The
16 governing body of such an intergovernmental cooperative
17 entity established prior to July 1, 1988 may make
18 participation retroactive to the effective date of the
19 agreement and, if so, the effective date of participation
20 shall be the date the required application is filed with
21 the fund. If any such entity is unable to pay the required
22 employer contributions to the fund, then the participating
23 municipalities shall make payment of the required
24 contributions and the payments shall be allocated as
25 provided in the agreement or, if not so provided, equally
26 among them.

- 1 xxi. The Illinois Municipal Electric Agency.
- 2 xxii. The Waukegan Port District.
- 3 xxiii. The Fox Waterway Agency created under the Fox
4 Waterway Agency Act.
- 5 xxiv. The Illinois Municipal Gas Agency.
- 6 xxv. The Kaskaskia Regional Port District.
- 7 xxvi. The Southwestern Illinois Development Authority.
- 8 xxvii. The Cairo Public Utility Company.
- 9 xxviii. Except with respect to employees who elect to
10 participate in the State Employees' Retirement System of
11 Illinois under Section 14-104.13 of this Code, the Chicago
12 Metropolitan Agency for Planning created under the
13 Regional Planning Act, provided that, with respect to the
14 benefits payable pursuant to Sections 7-146, 7-150, and
15 7-164 and the requirement that eligibility for such
16 benefits is conditional upon satisfying a minimum period
17 of service or a minimum contribution, any employee of the
18 Chicago Metropolitan Agency for Planning that was
19 immediately prior to such employment an employee of the
20 Chicago Area Transportation Study or the Northeastern
21 Illinois Planning Commission, such employee's service at
22 the Chicago Area Transportation Study or the Northeastern
23 Illinois Planning Commission and contributions to the
24 State Employees' Retirement System of Illinois established
25 under Article 14 and the Illinois Municipal Retirement
26 Fund shall count towards the satisfaction of such

1 requirements.

2 xxix. United Counties Council (formerly the Urban
3 Counties Council), but only if the Council has a ruling
4 from the United States Internal Revenue Service that it is
5 a governmental entity.

6 xxx. The Will County Governmental League, but only if
7 the League has a ruling from the United States Internal
8 Revenue Service that it is a governmental entity.

9 xxx. The Firefighters' Pension Investment Fund.

10 xxxii. The Police Officers' Pension Investment Fund.

11 (c) The governing boards of special education joint
12 agreements created under Section 10-22.31 of the School Code
13 without designation of an administrative district shall be
14 included within and be subject to this Article as
15 participating instrumentalities when the joint agreement
16 becomes effective. However, the governing board of any such
17 special education joint agreement in effect before September
18 5, 1975 shall not be subject to this Article unless the joint
19 agreement is modified by the school districts to provide that
20 the governing board is subject to this Article, except as
21 otherwise provided by this Section.

22 The governing board of the Special Education District of
23 Lake County shall become subject to this Article as a
24 participating instrumentality on July 1, 1997. Notwithstanding
25 subdivision (a)1 of Section 7-139, on the effective date of
26 participation, employees of the governing board of the Special

1 Education District of Lake County shall receive creditable
2 service for their prior service with that employer, up to a
3 maximum of 5 years, without any employee contribution.
4 Employees may establish creditable service for the remainder
5 of their prior service with that employer, if any, by applying
6 in writing and paying an employee contribution in an amount
7 determined by the Fund, based on the employee contribution
8 rates in effect at the time of application for the creditable
9 service and the employee's salary rate on the effective date
10 of participation for that employer, plus interest at the
11 effective rate from the date of the prior service to the date
12 of payment. Application for this creditable service must be
13 made before July 1, 1998; the payment may be made at any time
14 while the employee is still in service. The employer may elect
15 to make the required contribution on behalf of the employee.

16 The governing board of a special education joint agreement
17 created under Section 10-22.31 of the School Code for which an
18 administrative district has been designated, if there are
19 employees of the cooperative educational entity who are not
20 employees of the administrative district, may elect to
21 participate in the Fund and be included within this Article as
22 a participating instrumentality, subject to such application
23 procedures and rules as the Board may prescribe.

24 The Boards of Control of cooperative or joint educational
25 programs or projects created and administered under Section
26 3-15.14 of the School Code, whether or not the Boards act as

1 their own administrative district, shall be included within
2 and be subject to this Article as participating
3 instrumentalities when the agreement establishing the
4 cooperative or joint educational program or project becomes
5 effective.

6 The governing board of a special education joint agreement
7 entered into after June 30, 1984 and prior to September 17,
8 1985 which provides for representation on the governing board
9 by less than all the participating districts shall be included
10 within and subject to this Article as a participating
11 instrumentality. Such participation shall be effective as of
12 the date the joint agreement becomes effective.

13 The governing boards of educational service centers
14 established under Section 2-3.62 of the School Code shall be
15 included within and subject to this Article as participating
16 instrumentalities. The governing boards of vocational
17 education cooperative agreements created under the
18 Intergovernmental Cooperation Act and approved by the State
19 Board of Education shall be included within and be subject to
20 this Article as participating instrumentalities. If any such
21 governing boards or boards of control are unable to pay the
22 required employer contributions to the fund, then the school
23 districts served by such boards shall make payment of required
24 contributions as provided in Section 7-172. The payments shall
25 be allocated among the several school districts in proportion
26 to the number of students in average daily attendance for the

1 last full school year for each district in relation to the
2 total number of students in average attendance for such period
3 for all districts served. If such educational service centers,
4 vocational education cooperatives or cooperative or joint
5 educational programs or projects created and administered
6 under Section 3-15.14 of the School Code are dissolved, the
7 assets and obligations shall be distributed among the
8 districts in the same proportions unless otherwise provided.

9 The governing board of Paris Cooperative High School shall
10 be included within and be subject to this Article as a
11 participating instrumentality on the effective date of this
12 amendatory Act of the 96th General Assembly. If the governing
13 board of Paris Cooperative High School is unable to pay the
14 required employer contributions to the fund, then the school
15 districts served shall make payment of required contributions
16 as provided in Section 7-172. The payments shall be allocated
17 among the several school districts in proportion to the number
18 of students in average daily attendance for the last full
19 school year for each district in relation to the total number
20 of students in average attendance for such period for all
21 districts served. If Paris Cooperative High School is
22 dissolved, then the assets and obligations shall be
23 distributed among the districts in the same proportions unless
24 otherwise provided.

25 The Philip J. Rock Center and School shall be included
26 within and be subject to this Article as a participating

1 instrumentality on the effective date of this amendatory Act
2 of the 97th General Assembly. The Philip J. Rock Center and
3 School shall certify to the Fund the dates of service of all
4 employees within 90 days of the effective date of this
5 amendatory Act of the 97th General Assembly. The Fund shall
6 transfer to the IMRF account of the Philip J. Rock Center and
7 School all creditable service and all employer contributions
8 made on behalf of the employees for service at the Philip J.
9 Rock Center and School that were reported and paid to IMRF by
10 another employer prior to this date. If the Philip J. Rock
11 Center and School is unable to pay the required employer
12 contributions to the Fund, then the amount due will be paid by
13 all employers as defined in item (2) of paragraph (a) of
14 subsection (A) of this Section. The payments shall be
15 allocated among these employers in proportion to the number of
16 students in average daily attendance for the last full school
17 year for each district in relation to the total number of
18 students in average attendance for such period for all
19 districts. If the Philip J. Rock Center and School is
20 dissolved, then its IMRF assets and obligations shall be
21 distributed in the same proportions unless otherwise provided.

22 Financial Oversight Panels established under Article 1H of
23 the School Code shall be included within and be subject to this
24 Article as a participating instrumentality on the effective
25 date of this amendatory Act of the 97th General Assembly. If
26 the Financial Oversight Panel is unable to pay the required

1 employer contributions to the fund, then the school districts
2 served shall make payment of required contributions as
3 provided in Section 7-172. If the Financial Oversight Panel is
4 dissolved, then the assets and obligations shall be
5 distributed to the district served.

6 (d) The governing boards of special recreation joint
7 agreements created under Section 8-10b of the Park District
8 Code, operating without designation of an administrative
9 district or an administrative municipality appointed to
10 administer the program operating under the authority of such
11 joint agreement shall be included within and be subject to
12 this Article as participating instrumentalities when the joint
13 agreement becomes effective. However, the governing board of
14 any such special recreation joint agreement in effect before
15 January 1, 1980 shall not be subject to this Article unless the
16 joint agreement is modified, by the districts and
17 municipalities which are parties to the agreement, to provide
18 that the governing board is subject to this Article.

19 If the Board returns any employer and employee
20 contributions to any employer which erroneously submitted such
21 contributions on behalf of a special recreation joint
22 agreement, the Board shall include interest computed from the
23 end of each year to the date of payment, not compounded, at the
24 rate of 7% per annum.

25 (e) Each multi-township assessment district, the board of
26 trustees of which has adopted this Article by ordinance prior

1 to April 1, 1982, shall be a participating instrumentality
2 included within and subject to this Article effective December
3 1, 1981. The contributions required under Section 7-172 shall
4 be included in the budget prepared under and allocated in
5 accordance with Section 2-30 of the Property Tax Code.

6 (f) The Illinois Medical District Commission created under
7 the Illinois Medical District Act may be included within and
8 subject to this Article as a participating instrumentality,
9 notwithstanding that the location of the District is entirely
10 within the City of Chicago. To become a participating
11 instrumentality, the Commission must apply to the Board in the
12 manner set forth in paragraph (a) of this subsection (B). If
13 the Board approves the application, under the criteria and
14 procedures set forth in paragraph (a) and any other applicable
15 rules, criteria, and procedures of the Board, participation by
16 the Commission shall commence on the effective date specified
17 by the Board.

18 (C) Prospective participants.

19 Beginning January 1, 1992, each prospective participating
20 municipality or participating instrumentality shall pay to the
21 Fund the cost, as determined by the Board, of a study prepared
22 by the Fund or its actuary, detailing the prospective costs of
23 participation in the Fund to be expected by the municipality
24 or instrumentality.

25 (Source: P.A. 96-211, eff. 8-10-09; 96-551, eff. 8-17-09;

1 96-1000, eff. 7-2-10; 96-1046, eff. 7-14-10; 97-429, eff.
2 8-16-11; 97-854, eff. 7-26-12.)