

HB4607



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4607

by Rep. Sandy Cole

SYNOPSIS AS INTRODUCED:

40 ILCS 5/7-109

from Ch. 108 1/2, par. 7-109

Amends the Illinois Municipal Retirement Fund (IMRF) Article of the Illinois Pension Code, Amends the definition of "employee" to exclude persons whose employment does not benefit the public. Also includes technical changes. Effective immediately.

LRB097 18128 EFG 63352 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

A BILL FOR

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 changing
5 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
11 general fund of a municipality, or out of any special
12 fund or funds controlled by a municipality, or by an
13 instrumentality thereof, or a participating
14 instrumentality, including, in counties, the fees or
15 earnings of any county fee office; and

16 2. Under the usual common law rules applicable in
17 determining the employer-employee relationship, has
18 the status of an employee with a municipality, or any
19 instrumentality thereof, or a participating
20 instrumentality, including aldermen, county
21 supervisors and other persons (excepting those
22 employed as independent contractors) who are paid
23 compensation, fees, allowances or other emolument for

1 official duties, and, in counties, the several county
2 fee offices.

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

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

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

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

26 1. "An Act in relation to an Illinois State

1 Teachers' Pension and Retirement Fund", approved May
2 27, 1915, as amended;

3 2. Articles 15 and 16 of this Code.

4 However, such persons shall be included as employees to
5 the extent of earnings that are not eligible for inclusion
6 under the foregoing laws for services not of an
7 instructional nature of any kind.

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

13 (b) Are designated by the governing body of a
14 municipality in which a pension fund is required by law to
15 be established for policemen or firemen, respectively, as
16 performing police or fire protection duties, except that
17 when such persons are the heads of the police or fire
18 department and are not eligible to be included within any
19 such pension fund, they shall be included within this
20 Article; provided, that such persons shall not be excluded
21 to the extent of concurrent service and earnings not
22 designated as being for police or fire protection duties.
23 However, (i) any head of a police department who was a
24 participant under this Article immediately before October
25 1, 1977 and did not elect, under Section 3-109 of this Act,
26 to participate in a police pension fund shall be an

1 "employee", and (ii) any chief of police who elects to
2 participate in this Fund under Section 3-109.1 of this
3 Code, regardless of whether such person continues to be
4 employed as chief of police or is employed in some other
5 rank or capacity within the police department, shall be an
6 employee under this Article for so long as such person is
7 employed to perform police duties by a participating
8 municipality and has not lawfully rescinded that election.

9 (c) After August 26, 2011 (the effective date of Public
10 Act 97-609) ~~this amendatory Act of the 97th General~~
11 ~~Assembly~~, are contributors to or eligible to contribute to
12 a Taft-Hartley pension plan established on or before June
13 1, 2011 and are employees of a theatre, arena, or
14 convention center that is located in a municipality located
15 in a county with a population greater than 5,000,000, and
16 to which the participating municipality is required to
17 contribute as the person's employer based on earnings from
18 the municipality. Nothing in this paragraph shall affect
19 service credit or creditable service for any period of
20 service prior to August 26, 2011 ~~the effective date of this~~
21 ~~amendatory Act of the 97th General Assembly~~, and this
22 paragraph shall not apply to individuals who are
23 participating in the Fund prior to August 26, 2011 ~~the~~
24 ~~effective date of this amendatory Act of the 97th General~~
25 ~~Assembly~~.

26 (3) All persons, including, without limitation, public

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

19 (4) Notwithstanding any other provision of this Section,
20 beginning on the effective date of this amendatory Act of the
21 97th General Assembly, "employee" does not include any person
22 whose employment does not benefit the public.

23 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
24 revised 9-28-11.)

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