

# SB1989



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1989

Introduced 2/10/2011, by Sen. Kirk W. Dillard

#### SYNOPSIS AS INTRODUCED:

5 ILCS 315/3

from Ch. 48, par. 1603

Amends the Illinois Public Labor Relations Act. Provides that the following persons do not qualify as public employees for the purposes of the Act: legislative liaisons; deputy directors of departments; persons serving as chief legal counsel to a department; and persons serving as ethics officers under the State Officials and Employees Ethics Act. Defines "legislative liaison".

LRB097 09292 JDS 49427 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning government.

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

4 Section 5. The Illinois Public Labor Relations Act is  
5 amended by changing Section 3 as follows:

6 (5 ILCS 315/3) (from Ch. 48, par. 1603)

7 Sec. 3. Definitions. As used in this Act, unless the  
8 context otherwise requires:

9 (a) "Board" means the Illinois Labor Relations Board or,  
10 with respect to a matter over which the jurisdiction of the  
11 Board is assigned to the State Panel or the Local Panel under  
12 Section 5, the panel having jurisdiction over the matter.

13 (b) "Collective bargaining" means bargaining over terms  
14 and conditions of employment, including hours, wages, and other  
15 conditions of employment, as detailed in Section 7 and which  
16 are not excluded by Section 4.

17 (c) "Confidential employee" means an employee who, in the  
18 regular course of his or her duties, assists and acts in a  
19 confidential capacity to persons who formulate, determine, and  
20 effectuate management policies with regard to labor relations  
21 or who, in the regular course of his or her duties, has  
22 authorized access to information relating to the effectuation  
23 or review of the employer's collective bargaining policies.

1 (d) "Craft employees" means skilled journeymen, crafts  
2 persons, and their apprentices and helpers.

3 (e) "Essential services employees" means those public  
4 employees performing functions so essential that the  
5 interruption or termination of the function will constitute a  
6 clear and present danger to the health and safety of the  
7 persons in the affected community.

8 (f) "Exclusive representative", except with respect to  
9 non-State fire fighters and paramedics employed by fire  
10 departments and fire protection districts, non-State peace  
11 officers, and peace officers in the Department of State Police,  
12 means the labor organization that has been (i) designated by  
13 the Board as the representative of a majority of public  
14 employees in an appropriate bargaining unit in accordance with  
15 the procedures contained in this Act, (ii) historically  
16 recognized by the State of Illinois or any political  
17 subdivision of the State before July 1, 1984 (the effective  
18 date of this Act) as the exclusive representative of the  
19 employees in an appropriate bargaining unit, (iii) after July  
20 1, 1984 (the effective date of this Act) recognized by an  
21 employer upon evidence, acceptable to the Board, that the labor  
22 organization has been designated as the exclusive  
23 representative by a majority of the employees in an appropriate  
24 bargaining unit; (iv) recognized as the exclusive  
25 representative of personal care attendants or personal  
26 assistants under Executive Order 2003-8 prior to the effective

1 date of this amendatory Act of the 93rd General Assembly, and  
2 the organization shall be considered to be the exclusive  
3 representative of the personal care attendants or personal  
4 assistants as defined in this Section; or (v) recognized as the  
5 exclusive representative of child and day care home providers,  
6 including licensed and license exempt providers, pursuant to an  
7 election held under Executive Order 2005-1 prior to the  
8 effective date of this amendatory Act of the 94th General  
9 Assembly, and the organization shall be considered to be the  
10 exclusive representative of the child and day care home  
11 providers as defined in this Section.

12 With respect to non-State fire fighters and paramedics  
13 employed by fire departments and fire protection districts,  
14 non-State peace officers, and peace officers in the Department  
15 of State Police, "exclusive representative" means the labor  
16 organization that has been (i) designated by the Board as the  
17 representative of a majority of peace officers or fire fighters  
18 in an appropriate bargaining unit in accordance with the  
19 procedures contained in this Act, (ii) historically recognized  
20 by the State of Illinois or any political subdivision of the  
21 State before January 1, 1986 (the effective date of this  
22 amendatory Act of 1985) as the exclusive representative by a  
23 majority of the peace officers or fire fighters in an  
24 appropriate bargaining unit, or (iii) after January 1, 1986  
25 (the effective date of this amendatory Act of 1985) recognized  
26 by an employer upon evidence, acceptable to the Board, that the

1 labor organization has been designated as the exclusive  
2 representative by a majority of the peace officers or fire  
3 fighters in an appropriate bargaining unit.

4 (g) "Fair share agreement" means an agreement between the  
5 employer and an employee organization under which all or any of  
6 the employees in a collective bargaining unit are required to  
7 pay their proportionate share of the costs of the collective  
8 bargaining process, contract administration, and pursuing  
9 matters affecting wages, hours, and other conditions of  
10 employment, but not to exceed the amount of dues uniformly  
11 required of members. The amount certified by the exclusive  
12 representative shall not include any fees for contributions  
13 related to the election or support of any candidate for  
14 political office. Nothing in this subsection (g) shall preclude  
15 an employee from making voluntary political contributions in  
16 conjunction with his or her fair share payment.

17 (g-1) "Fire fighter" means, for the purposes of this Act  
18 only, any person who has been or is hereafter appointed to a  
19 fire department or fire protection district or employed by a  
20 state university and sworn or commissioned to perform fire  
21 fighter duties or paramedic duties, except that the following  
22 persons are not included: part-time fire fighters, auxiliary,  
23 reserve or voluntary fire fighters, including paid on-call fire  
24 fighters, clerks and dispatchers or other civilian employees of  
25 a fire department or fire protection district who are not  
26 routinely expected to perform fire fighter duties, or elected

1 officials.

2 (g-2) "General Assembly of the State of Illinois" means the  
3 legislative branch of the government of the State of Illinois,  
4 as provided for under Article IV of the Constitution of the  
5 State of Illinois, and includes but is not limited to the House  
6 of Representatives, the Senate, the Speaker of the House of  
7 Representatives, the Minority Leader of the House of  
8 Representatives, the President of the Senate, the Minority  
9 Leader of the Senate, the Joint Committee on Legislative  
10 Support Services and any legislative support services agency  
11 listed in the Legislative Commission Reorganization Act of  
12 1984.

13 (h) "Governing body" means, in the case of the State, the  
14 State Panel of the Illinois Labor Relations Board, the Director  
15 of the Department of Central Management Services, and the  
16 Director of the Department of Labor; the county board in the  
17 case of a county; the corporate authorities in the case of a  
18 municipality; and the appropriate body authorized to provide  
19 for expenditures of its funds in the case of any other unit of  
20 government.

21 (i) "Labor organization" means any organization in which  
22 public employees participate and that exists for the purpose,  
23 in whole or in part, of dealing with a public employer  
24 concerning wages, hours, and other terms and conditions of  
25 employment, including the settlement of grievances.

26 (i-5) "Legislative liaison" means a person who is an

1 employee of a department, division, agency, board, commission,  
2 or office under the jurisdiction of the Governor, Lieutenant  
3 Governor, Attorney General, Secretary of State, Comptroller,  
4 or Treasurer and who communicates in the course of his or her  
5 employment with any official or staff of the legislative branch  
6 of State government for the purpose of influencing any  
7 legislative action.

8 (j) "Managerial employee" means an individual who is  
9 engaged predominantly in executive and management functions  
10 and is charged with the responsibility of directing the  
11 effectuation of management policies and practices.

12 (k) "Peace officer" means, for the purposes of this Act  
13 only, any persons who have been or are hereafter appointed to a  
14 police force, department, or agency and sworn or commissioned  
15 to perform police duties, except that the following persons are  
16 not included: part-time police officers, special police  
17 officers, auxiliary police as defined by Section 3.1-30-20 of  
18 the Illinois Municipal Code, night watchmen, "merchant  
19 police", court security officers as defined by Section 3-6012.1  
20 of the Counties Code, temporary employees, traffic guards or  
21 wardens, civilian parking meter and parking facilities  
22 personnel or other individuals specially appointed to aid or  
23 direct traffic at or near schools or public functions or to aid  
24 in civil defense or disaster, parking enforcement employees who  
25 are not commissioned as peace officers and who are not armed  
26 and who are not routinely expected to effect arrests, parking

1 lot attendants, clerks and dispatchers or other civilian  
2 employees of a police department who are not routinely expected  
3 to effect arrests, or elected officials.

4 (l) "Person" includes one or more individuals, labor  
5 organizations, public employees, associations, corporations,  
6 legal representatives, trustees, trustees in bankruptcy,  
7 receivers, or the State of Illinois or any political  
8 subdivision of the State or governing body, but does not  
9 include the General Assembly of the State of Illinois or any  
10 individual employed by the General Assembly of the State of  
11 Illinois.

12 (m) "Professional employee" means any employee engaged in  
13 work predominantly intellectual and varied in character rather  
14 than routine mental, manual, mechanical or physical work;  
15 involving the consistent exercise of discretion and adjustment  
16 in its performance; of such a character that the output  
17 produced or the result accomplished cannot be standardized in  
18 relation to a given period of time; and requiring advanced  
19 knowledge in a field of science or learning customarily  
20 acquired by a prolonged course of specialized intellectual  
21 instruction and study in an institution of higher learning or a  
22 hospital, as distinguished from a general academic education or  
23 from apprenticeship or from training in the performance of  
24 routine mental, manual, or physical processes; or any employee  
25 who has completed the courses of specialized intellectual  
26 instruction and study prescribed in this subsection (m) and is



1 performing related work under the supervision of a professional  
2 person to qualify to become a professional employee as defined  
3 in this subsection (m).

4 (n) "Public employee" or "employee", for the purposes of  
5 this Act, means any individual employed by a public employer,  
6 including (i) interns and residents at public hospitals, (ii)  
7 as of the effective date of this amendatory Act of the 93rd  
8 General Assembly, but not before, personal care attendants and  
9 personal assistants working under the Home Services Program  
10 under Section 3 of the Disabled Persons Rehabilitation Act,  
11 subject to the limitations set forth in this Act and in the  
12 Disabled Persons Rehabilitation Act, and (iii) as of the  
13 effective date of this amendatory Act of the 94th General  
14 Assembly, but not before, child and day care home providers  
15 participating in the child care assistance program under  
16 Section 9A-11 of the Illinois Public Aid Code, subject to the  
17 limitations set forth in this Act and in Section 9A-11 of the  
18 Illinois Public Aid Code, but excluding all of the following:  
19 employees of the General Assembly of the State of Illinois;  
20 elected officials; executive heads of a department, including,  
21 but not limited to, persons who hold the rank of deputy  
22 director or chief legal counsel; members of boards or  
23 commissions; the Executive Inspectors General; any special  
24 Executive Inspectors General; employees of each Office of an  
25 Executive Inspector General; commissioners and employees of  
26 the Executive Ethics Commission; the Auditor General's

1 Inspector General; employees of the Office of the Auditor  
2 General's Inspector General; the Legislative Inspector  
3 General; any special Legislative Inspectors General; employees  
4 of the Office of the Legislative Inspector General;  
5 commissioners and employees of the Legislative Ethics  
6 Commission; persons serving as ethics officers under the State  
7 Officials and Employees Ethics Act; employees of any agency,  
8 board or commission created by this Act; employees appointed to  
9 State positions of a temporary or emergency nature; all  
10 employees of school districts and higher education  
11 institutions except firefighters and peace officers employed  
12 by a state university and except peace officers employed by a  
13 school district in its own police department in existence on  
14 the effective date of this amendatory Act of the 96th General  
15 Assembly; managerial employees; short-term employees;  
16 confidential employees; independent contractors; legislative  
17 liaisons; and supervisors except as provided in this Act.

18 Personal care attendants and personal assistants shall not  
19 be considered public employees for any purposes not  
20 specifically provided for in the amendatory Act of the 93rd  
21 General Assembly, including but not limited to, purposes of  
22 vicarious liability in tort and purposes of statutory  
23 retirement or health insurance benefits. Personal care  
24 attendants and personal assistants shall not be covered by the  
25 State Employees Group Insurance Act of 1971 (5 ILCS 375/).

26 Child and day care home providers shall not be considered

1 public employees for any purposes not specifically provided for  
2 in this amendatory Act of the 94th General Assembly, including  
3 but not limited to, purposes of vicarious liability in tort and  
4 purposes of statutory retirement or health insurance benefits.  
5 Child and day care home providers shall not be covered by the  
6 State Employees Group Insurance Act of 1971.

7 Notwithstanding Section 9, subsection (c), or any other  
8 provisions of this Act, all peace officers above the rank of  
9 captain in municipalities with more than 1,000,000 inhabitants  
10 shall be excluded from this Act.

11 (o) Except as otherwise in subsection (o-5), "public  
12 employer" or "employer" means the State of Illinois; any  
13 political subdivision of the State, unit of local government or  
14 school district; authorities including departments, divisions,  
15 bureaus, boards, commissions, or other agencies of the  
16 foregoing entities; and any person acting within the scope of  
17 his or her authority, express or implied, on behalf of those  
18 entities in dealing with its employees. As of the effective  
19 date of the amendatory Act of the 93rd General Assembly, but  
20 not before, the State of Illinois shall be considered the  
21 employer of the personal care attendants and personal  
22 assistants working under the Home Services Program under  
23 Section 3 of the Disabled Persons Rehabilitation Act, subject  
24 to the limitations set forth in this Act and in the Disabled  
25 Persons Rehabilitation Act. The State shall not be considered  
26 to be the employer of personal care attendants and personal

1 assistants for any purposes not specifically provided for in  
2 this amendatory Act of the 93rd General Assembly, including but  
3 not limited to, purposes of vicarious liability in tort and  
4 purposes of statutory retirement or health insurance benefits.  
5 Personal care attendants and personal assistants shall not be  
6 covered by the State Employees Group Insurance Act of 1971 (5  
7 ILCS 375/). As of the effective date of this amendatory Act of  
8 the 94th General Assembly but not before, the State of Illinois  
9 shall be considered the employer of the day and child care home  
10 providers participating in the child care assistance program  
11 under Section 9A-11 of the Illinois Public Aid Code, subject to  
12 the limitations set forth in this Act and in Section 9A-11 of  
13 the Illinois Public Aid Code. The State shall not be considered  
14 to be the employer of child and day care home providers for any  
15 purposes not specifically provided for in this amendatory Act  
16 of the 94th General Assembly, including but not limited to,  
17 purposes of vicarious liability in tort and purposes of  
18 statutory retirement or health insurance benefits. Child and  
19 day care home providers shall not be covered by the State  
20 Employees Group Insurance Act of 1971.

21 "Public employer" or "employer" as used in this Act,  
22 however, does not mean and shall not include the General  
23 Assembly of the State of Illinois, the Executive Ethics  
24 Commission, the Offices of the Executive Inspectors General,  
25 the Legislative Ethics Commission, the Office of the  
26 Legislative Inspector General, the Office of the Auditor

1 General's Inspector General, and educational employers or  
2 employers as defined in the Illinois Educational Labor  
3 Relations Act, except with respect to a state university in its  
4 employment of firefighters and peace officers and except with  
5 respect to a school district in the employment of peace  
6 officers in its own police department in existence on the  
7 effective date of this amendatory Act of the 96th General  
8 Assembly. County boards and county sheriffs shall be designated  
9 as joint or co-employers of county peace officers appointed  
10 under the authority of a county sheriff. Nothing in this  
11 subsection (o) shall be construed to prevent the State Panel or  
12 the Local Panel from determining that employers are joint or  
13 co-employers.

14 (o-5) With respect to wages, fringe benefits, hours,  
15 holidays, vacations, proficiency examinations, sick leave, and  
16 other conditions of employment, the public employer of public  
17 employees who are court reporters, as defined in the Court  
18 Reporters Act, shall be determined as follows:

19 (1) For court reporters employed by the Cook County  
20 Judicial Circuit, the chief judge of the Cook County  
21 Circuit Court is the public employer and employer  
22 representative.

23 (2) For court reporters employed by the 12th, 18th,  
24 19th, and, on and after December 4, 2006, the 22nd judicial  
25 circuits, a group consisting of the chief judges of those  
26 circuits, acting jointly by majority vote, is the public

1 employer and employer representative.

2 (3) For court reporters employed by all other judicial  
3 circuits, a group consisting of the chief judges of those  
4 circuits, acting jointly by majority vote, is the public  
5 employer and employer representative.

6 (p) "Security employee" means an employee who is  
7 responsible for the supervision and control of inmates at  
8 correctional facilities. The term also includes other  
9 non-security employees in bargaining units having the majority  
10 of employees being responsible for the supervision and control  
11 of inmates at correctional facilities.

12 (q) "Short-term employee" means an employee who is employed  
13 for less than 2 consecutive calendar quarters during a calendar  
14 year and who does not have a reasonable assurance that he or  
15 she will be rehired by the same employer for the same service  
16 in a subsequent calendar year.

17 (r) "Supervisor" is an employee whose principal work is  
18 substantially different from that of his or her subordinates  
19 and who has authority, in the interest of the employer, to  
20 hire, transfer, suspend, lay off, recall, promote, discharge,  
21 direct, reward, or discipline employees, to adjust their  
22 grievances, or to effectively recommend any of those actions,  
23 if the exercise of that authority is not of a merely routine or  
24 clerical nature, but requires the consistent use of independent  
25 judgment. Except with respect to police employment, the term  
26 "supervisor" includes only those individuals who devote a

1 preponderance of their employment time to exercising that  
2 authority, State supervisors notwithstanding. In addition, in  
3 determining supervisory status in police employment, rank  
4 shall not be determinative. The Board shall consider, as  
5 evidence of bargaining unit inclusion or exclusion, the common  
6 law enforcement policies and relationships between police  
7 officer ranks and certification under applicable civil service  
8 law, ordinances, personnel codes, or Division 2.1 of Article 10  
9 of the Illinois Municipal Code, but these factors shall not be  
10 the sole or predominant factors considered by the Board in  
11 determining police supervisory status.

12 Notwithstanding the provisions of the preceding paragraph,  
13 in determining supervisory status in fire fighter employment,  
14 no fire fighter shall be excluded as a supervisor who has  
15 established representation rights under Section 9 of this Act.  
16 Further, in new fire fighter units, employees shall consist of  
17 fire fighters of the rank of company officer and below. If a  
18 company officer otherwise qualifies as a supervisor under the  
19 preceding paragraph, however, he or she shall not be included  
20 in the fire fighter unit. If there is no rank between that of  
21 chief and the highest company officer, the employer may  
22 designate a position on each shift as a Shift Commander, and  
23 the persons occupying those positions shall be supervisors. All  
24 other ranks above that of company officer shall be supervisors.

25 (s) (1) "Unit" means a class of jobs or positions that are  
26 held by employees whose collective interests may suitably

1 be represented by a labor organization for collective  
2 bargaining. Except with respect to non-State fire fighters  
3 and paramedics employed by fire departments and fire  
4 protection districts, non-State peace officers, and peace  
5 officers in the Department of State Police, a bargaining  
6 unit determined by the Board shall not include both  
7 employees and supervisors, or supervisors only, except as  
8 provided in paragraph (2) of this subsection (s) and except  
9 for bargaining units in existence on July 1, 1984 (the  
10 effective date of this Act). With respect to non-State fire  
11 fighters and paramedics employed by fire departments and  
12 fire protection districts, non-State peace officers, and  
13 peace officers in the Department of State Police, a  
14 bargaining unit determined by the Board shall not include  
15 both supervisors and nonsupervisors, or supervisors only,  
16 except as provided in paragraph (2) of this subsection (s)  
17 and except for bargaining units in existence on January 1,  
18 1986 (the effective date of this amendatory Act of 1985). A  
19 bargaining unit determined by the Board to contain peace  
20 officers shall contain no employees other than peace  
21 officers unless otherwise agreed to by the employer and the  
22 labor organization or labor organizations involved.  
23 Notwithstanding any other provision of this Act, a  
24 bargaining unit, including a historical bargaining unit,  
25 containing sworn peace officers of the Department of  
26 Natural Resources (formerly designated the Department of



1 Conservation) shall contain no employees other than such  
2 sworn peace officers upon the effective date of this  
3 amendatory Act of 1990 or upon the expiration date of any  
4 collective bargaining agreement in effect upon the  
5 effective date of this amendatory Act of 1990 covering both  
6 such sworn peace officers and other employees.

7 (2) Notwithstanding the exclusion of supervisors from  
8 bargaining units as provided in paragraph (1) of this  
9 subsection (s), a public employer may agree to permit its  
10 supervisory employees to form bargaining units and may  
11 bargain with those units. This Act shall apply if the  
12 public employer chooses to bargain under this subsection.

13 (3) Public employees who are court reporters, as  
14 defined in the Court Reporters Act, shall be divided into 3  
15 units for collective bargaining purposes. One unit shall be  
16 court reporters employed by the Cook County Judicial  
17 Circuit; one unit shall be court reporters employed by the  
18 12th, 18th, 19th, and, on and after December 4, 2006, the  
19 22nd judicial circuits; and one unit shall be court  
20 reporters employed by all other judicial circuits.

21 (Source: P.A. 95-331, eff. 8-21-07; 96-1257, eff. 7-23-10.)