

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 (Text of Section before amendment by P.A. 98-599)
8 Sec. 7-109. Employee.

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

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

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

1 compensation, fees, allowances or other emolument for
2 official duties, and, in counties, the several county
3 fee offices.

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

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

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

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

1 1. "An Act in relation to an Illinois State
2 Teachers' Pension and Retirement Fund", approved May
3 27, 1915, as amended;

4 2. Articles 15 and 16 of this Code.

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

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

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

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

10 (c) ~~Are After August 26, 2011 (the effective date of~~
11 ~~Public Act 97-609), are contributors to or eligible to~~
12 ~~contribute to a Taft-Hartley pension plan established on or~~
13 ~~before June 1, 2011 and are employees of a theatre, arena,~~
14 ~~or convention center that is located in a municipality~~
15 ~~located in a county with a population greater than~~
16 ~~5,000,000, and to which the participating municipality is~~
17 ~~required to contribute as the person's employer based on~~
18 ~~earnings from the municipality. Nothing in this paragraph~~
19 ~~shall affect service credit or creditable service for any~~
20 ~~period of service prior to the effective date of this~~
21 ~~amendatory Act of the 98th General Assembly August 26,~~
22 ~~2011, and this paragraph shall not apply to individuals who~~
23 ~~are participating in the Fund prior to the effective date~~
24 ~~of this amendatory Act of the 98th General Assembly August~~
25 ~~26, 2011.~~

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 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
20 97-813, eff. 7-13-12.)

21 (Text of Section after amendment by P.A. 98-599)

22 Sec. 7-109. Employee.

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4 instrumentality, including, in counties, the fees or
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21 not his earnings are paid from the income of the permanent
22 township fund or from funds subject to distribution to the
23 several school districts and parts of school districts as
24 provided in the School Code, or from both such sources; or
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26 chief fiscal officer, or other employee of a Financial

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4 earnings from the municipality. Nothing in this paragraph
5 shall affect service credit or creditable service for any
6 period of service prior to the effective date of this
7 amendatory Act of the 98th General Assembly August 26,
8 ~~2011,~~ and this paragraph shall not apply to individuals who
9 are participating in the Fund prior to the effective date
10 of this amendatory Act of the 98th General Assembly August
11 ~~26, 2011.~~

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 98th 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
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3 of a person or persons other than a county board or a county
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14 participating employees in the Fund.

15 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
16 97-813, eff. 7-13-12; 98-599, eff. 6-1-14.)

17 Section 95. No acceleration or delay. Where this Act makes
18 changes in a statute that is represented in this Act by text
19 that is not yet or no longer in effect (for example, a Section
20 represented by multiple versions), the use of that text does
21 not accelerate or delay the taking effect of (i) the changes
22 made by this Act or (ii) provisions derived from any other
23 Public Act.

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