



Rep. Daniel V. Beiser

**Filed: 3/26/2014**

09800HB3902ham001

LRB098 15461 EFG 57478 a

1 AMENDMENT TO HOUSE BILL 3902

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3902 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by  
5 changing 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

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

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

1 conjunction with the school district, a contractual  
2 agreement for exclusion from this Section.

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

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

6 (a) Are eligible for inclusion under any of the  
7 following laws:

8 1. "An Act in relation to an Illinois State  
9 Teachers' Pension and Retirement Fund", approved May  
10 27, 1915, as amended;

11 2. Articles 15 and 16 of this Code.

12 However, such persons shall be included as employees to  
13 the extent of earnings that are not eligible for inclusion  
14 under the foregoing laws for services not of an  
15 instructional nature of any kind.

16 However, any member of the armed forces who is employed  
17 as a teacher of subjects in the Reserve Officers Training  
18 Corps of any school and who is not certified under the law  
19 governing the certification of teachers shall be included  
20 as an employee.

21 (b) Are designated by the governing body of a  
22 municipality in which a pension fund is required by law to  
23 be established for policemen or firemen, respectively, as  
24 performing police or fire protection duties, except that  
25 when such persons are the heads of the police or fire  
26 department and are not eligible to be included within any

1 such pension fund, they shall be included within this  
2 Article; provided, that such persons shall not be excluded  
3 to the extent of concurrent service and earnings not  
4 designated as being for police or fire protection duties.  
5 However, (i) any head of a police department who was a  
6 participant under this Article immediately before October  
7 1, 1977 and did not elect, under Section 3-109 of this Act,  
8 to participate in a police pension fund shall be an  
9 "employee", and (ii) any chief of police who elects to  
10 participate in this Fund under Section 3-109.1 of this  
11 Code, regardless of whether such person continues to be  
12 employed as chief of police or is employed in some other  
13 rank or capacity within the police department, shall be an  
14 employee under this Article for so long as such person is  
15 employed to perform police duties by a participating  
16 municipality and has not lawfully rescinded that election.

17 (c) ~~Are After August 26, 2011 (the effective date of~~  
18 ~~Public Act 97-609), are~~ contributors to or eligible to  
19 contribute to a Taft-Hartley pension plan ~~established on or~~  
20 ~~before June 1, 2011 and are employees of a theatre, arena,~~  
21 ~~or convention center that is located in a municipality~~  
22 ~~located in a county with a population greater than~~  
23 ~~5,000,000, and~~ to which the participating municipality is  
24 required to contribute as the person's employer based on  
25 earnings from the municipality. Nothing in this paragraph  
26 shall affect service credit or creditable service for any

1 period of service prior to the effective date of this  
2 amendatory Act of the 98th General Assembly August 26,  
3 ~~2011~~, and this paragraph shall not apply to individuals who  
4 are participating in the Fund prior to the effective date  
5 of this amendatory Act of the 98th General Assembly August  
6 ~~26, 2011~~.

7 (3) All persons, including, without limitation, public  
8 defenders and probation officers, who receive earnings from  
9 general or special funds of a county for performance of  
10 personal services or official duties within the territorial  
11 limits of the county, are employees of the county (unless  
12 excluded by subsection (2) of this Section) notwithstanding  
13 that they may be appointed by and are subject to the direction  
14 of a person or persons other than a county board or a county  
15 officer. It is hereby established that an employer-employee  
16 relationship under the usual common law rules exists between  
17 such employees and the county paying their salaries by reason  
18 of the fact that the county boards fix their rates of  
19 compensation, appropriate funds for payment of their earnings  
20 and otherwise exercise control over them. This finding and this  
21 amendatory Act shall apply to all such employees from the date  
22 of appointment whether such date is prior to or after the  
23 effective date of this amendatory Act and is intended to  
24 clarify existing law pertaining to their status as  
25 participating employees in the Fund.

26 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;

1 97-813, eff. 7-13-12.)

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

3 Sec. 7-109. Employee.

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6 of personal services or official duties out of the  
7 general fund of a municipality, or out of any special  
8 fund or funds controlled by a municipality, or by an  
9 instrumentality thereof, or a participating  
10 instrumentality, including, in counties, the fees or  
11 earnings of any county fee office; and

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

22 (b) Serves as a township treasurer appointed under the  
23 School Code, as heretofore or hereafter amended, and who  
24 receives for such services regular compensation as  
25 distinguished from per diem compensation, and any regular

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

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

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19 following laws:

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22 27, 1915, as amended;

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25 the extent of earnings that are not eligible for inclusion  
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3 as a teacher of subjects in the Reserve Officers Training  
4 Corps of any school and who is not certified under the law  
5 governing the certification of teachers shall be included  
6 as an employee.

7 (b) Are designated by the governing body of a  
8 municipality in which a pension fund is required by law to  
9 be established for policemen or firemen, respectively, as  
10 performing police or fire protection duties, except that  
11 when such persons are the heads of the police or fire  
12 department and are not eligible to be included within any  
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18 participant under this Article immediately before October  
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10 required to contribute as the person's employer based on  
11 earnings from the municipality. Nothing in this paragraph  
12 shall affect service credit or creditable service for any  
13 period of service prior to the effective date of this  
14 amendatory Act of the 98th General Assembly August 26,  
15 2011, and this paragraph shall not apply to individuals who  
16 are participating in the Fund prior to the effective date  
17 of this amendatory Act of the 98th General Assembly August  
18 26, 2011.

19 (d) Become an employee of any of the following  
20 participating instrumentalities on or after the effective  
21 date of this amendatory Act of the 98th General Assembly:  
22 the Illinois Municipal League; the Illinois Association of  
23 Park Districts; the Illinois Supervisors, County  
24 Commissioners and Superintendents of Highways Association;  
25 an association, or not-for-profit corporation, membership  
26 in which is authorized under Section 85-15 of the Township

1 Code; the United Counties Council; or the Will County  
2 Governmental League.

3 (3) All persons, including, without limitation, public  
4 defenders and probation officers, who receive earnings from  
5 general or special funds of a county for performance of  
6 personal services or official duties within the territorial  
7 limits of the county, are employees of the county (unless  
8 excluded by subsection (2) of this Section) notwithstanding  
9 that they may be appointed by and are subject to the direction  
10 of a person or persons other than a county board or a county  
11 officer. It is hereby established that an employer-employee  
12 relationship under the usual common law rules exists between  
13 such employees and the county paying their salaries by reason  
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15 compensation, appropriate funds for payment of their earnings  
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18 of appointment whether such date is prior to or after the  
19 effective date of this amendatory Act and is intended to  
20 clarify existing law pertaining to their status as  
21 participating employees in the Fund.

22 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;  
23 97-813, eff. 7-13-12; 98-599, eff. 6-1-14.)

24 Section 95. No acceleration or delay. Where this Act makes  
25 changes in a statute that is represented in this Act by text

1 that is not yet or no longer in effect (for example, a Section  
2 represented by multiple versions), the use of that text does  
3 not accelerate or delay the taking effect of (i) the changes  
4 made by this Act or (ii) provisions derived from any other  
5 Public Act.

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.".