



Rep. Martin J. Moylan

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1 AMENDMENT TO HOUSE BILL 4259

2 AMENDMENT NO. _____. Amend House Bill 4259 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Pension Code is amended by
5 changing Sections 7-109, 15-106, 15-107, and 16-106 as follows:

6 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

7 (Text of Section WITHOUT the changes made by P.A. 98-599,
8 which has been held unconstitutional)

9 Sec. 7-109. Employee.

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

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

1 earnings of any county fee office; and

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

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

1 has negotiated with the Financial Oversight Panel, in
2 conjunction with the school district, a contractual
3 agreement for exclusion from this Section.

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

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

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

9 1. "An Act in relation to an Illinois State
10 Teachers' Pension and Retirement Fund", approved May
11 27, 1915, as amended;

12 2. Articles 15 and 16 of this Code.

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

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

22 (b) Are designated by the governing body of a
23 municipality in which a pension fund is required by law to
24 be established for policemen or firemen, respectively, as
25 performing police or fire protection duties, except that
26 when such persons are the heads of the police or fire

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

18 (c) Are contributors to or eligible to contribute to a
19 Taft-Hartley pension plan to which the participating
20 municipality is required to contribute as the person's
21 employer based on earnings from the municipality. Nothing
22 in this paragraph shall affect service credit or creditable
23 service for any period of service prior to the effective
24 date of this amendatory Act of the 98th General Assembly,
25 and this paragraph shall not apply to individuals who are
26 participating in the Fund prior to the effective date of

1 this amendatory Act of the 98th General Assembly.

2 (d) Become an employee of any of the following
3 participating instrumentalities on or after the effective
4 date of this amendatory Act of the 99th General Assembly:
5 the Illinois Municipal League; the Illinois Association of
6 Park Districts; the Illinois Supervisors, County
7 Commissioners and Superintendents of Highways Association;
8 an association, or not-for-profit corporation, membership
9 in which is authorized under Section 85-15 of the Township
10 Code; the United Counties Council; or the Will County
11 Governmental League.

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

1 of appointment whether such date is prior to or after the
2 effective date of this amendatory Act and is intended to
3 clarify existing law pertaining to their status as
4 participating employees in the Fund.

5 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
6 97-813, eff. 7-13-12; 98-712, eff. 7-16-14.)

7 (40 ILCS 5/15-106) (from Ch. 108 1/2, par. 15-106)

8 (Text of Section WITHOUT the changes made by P.A. 98-599,
9 which has been held unconstitutional)

10 Sec. 15-106. Employer. "Employer": The University of
11 Illinois, Southern Illinois University, Chicago State
12 University, Eastern Illinois University, Governors State
13 University, Illinois State University, Northeastern Illinois
14 University, Northern Illinois University, Western Illinois
15 University, the State Board of Higher Education, the Illinois
16 Mathematics and Science Academy, the University Civil Service
17 Merit Board, the Board of Trustees of the State Universities
18 Retirement System, the Illinois Community College Board,
19 community college boards, any association of community college
20 boards organized under Section 3-55 of the Public Community
21 College Act, the Board of Examiners established under the
22 Illinois Public Accounting Act, and, only during the period for
23 which employer contributions required under Section 15-155 are
24 paid, the following organizations: the alumni associations,
25 the foundations and the athletic associations which are

1 affiliated with the universities and colleges included in this
2 Section as employers. An individual who begins employment on or
3 after the effective date of this amendatory Act of the 99th
4 General Assembly with any association of community college
5 boards organized under Section 3-55 of the Public Community
6 College Act, the Association of Illinois Middle-Grade Schools,
7 the Illinois Association of School Administrators, the
8 Illinois Association for Supervision and Curriculum
9 Development, the Illinois Principals Association, the Illinois
10 Association of School Business Officials, the Illinois Special
11 Olympics, or an entity not defined as an employer in this
12 Section shall not be deemed an employee for the purposes of
13 this Article with respect to that employment and shall not be
14 eligible to participate in the System with respect to that
15 employment; provided, however, that those individuals who are
16 both employed by such an entity and are participating in the
17 System with respect to that employment on the effective date of
18 this amendatory Act of the 99th General Assembly shall be
19 allowed to continue as participants in the System for the
20 duration of that employment.

21 A department as defined in Section 14-103.04 is an employer
22 for any person appointed by the Governor under the Civil
23 Administrative Code of Illinois who is a participating employee
24 as defined in Section 15-109. The Department of Central
25 Management Services is an employer with respect to persons
26 employed by the State Board of Higher Education in positions

1 with the Illinois Century Network as of June 30, 2004 who
2 remain continuously employed after that date by the Department
3 of Central Management Services in positions with the Illinois
4 Century Network, the Bureau of Communication and Computer
5 Services, or, if applicable, any successor bureau.

6 The cities of Champaign and Urbana shall be considered
7 employers, but only during the period for which contributions
8 are required to be made under subsection (b-1) of Section
9 15-155 and only with respect to individuals described in
10 subsection (h) of Section 15-107.

11 (Source: P.A. 95-369, eff. 8-23-07; 95-728, eff. 7-1-08 - See
12 Sec. 999.)

13 (40 ILCS 5/15-107) (from Ch. 108 1/2, par. 15-107)

14 (Text of Section WITHOUT the changes made by P.A. 98-599,
15 which has been held unconstitutional)

16 Sec. 15-107. Employee.

17 (a) "Employee" means any member of the educational,
18 administrative, secretarial, clerical, mechanical, labor or
19 other staff of an employer whose employment is permanent and
20 continuous or who is employed in a position in which services
21 are expected to be rendered on a continuous basis for at least
22 4 months or one academic term, whichever is less, who (A)
23 receives payment for personal services on a warrant issued
24 pursuant to a payroll voucher certified by an employer and
25 drawn by the State Comptroller upon the State Treasurer or by

1 an employer upon trust, federal or other funds, or (B) is on a
2 leave of absence without pay. Employment which is irregular,
3 intermittent or temporary shall not be considered continuous
4 for purposes of this paragraph.

5 However, a person is not an "employee" if he or she:

6 (1) is a student enrolled in and regularly attending
7 classes in a college or university which is an employer,
8 and is employed on a temporary basis at less than full
9 time;

10 (2) is currently receiving a retirement annuity or a
11 disability retirement annuity under Section 15-153.2 from
12 this System;

13 (3) is on a military leave of absence;

14 (4) is eligible to participate in the Federal Civil
15 Service Retirement System and is currently making
16 contributions to that system based upon earnings paid by an
17 employer;

18 (5) is on leave of absence without pay for more than 60
19 days immediately following termination of disability
20 benefits under this Article;

21 (6) is hired after June 30, 1979 as a public service
22 employment program participant under the Federal
23 Comprehensive Employment and Training Act and receives
24 earnings in whole or in part from funds provided under that
25 Act; or

26 (7) is employed on or after July 1, 1991 to perform

1 services that are excluded by subdivision (a)(7)(f) or
2 (a)(19) of Section 210 of the federal Social Security Act
3 from the definition of employment given in that Section (42
4 U.S.C. 410).

5 (b) Any employer may, by filing a written notice with the
6 board, exclude from the definition of "employee" all persons
7 employed pursuant to a federally funded contract entered into
8 after July 1, 1982 with a federal military department in a
9 program providing training in military courses to federal
10 military personnel on a military site owned by the United
11 States Government, if this exclusion is not prohibited by the
12 federally funded contract or federal laws or rules governing
13 the administration of the contract.

14 (c) Any person appointed by the Governor under the Civil
15 Administrative Code of the State is an employee, if he or she
16 is a participant in this system on the effective date of the
17 appointment.

18 (d) A participant on lay-off status under civil service
19 rules is considered an employee for not more than 120 days from
20 the date of the lay-off.

21 (e) A participant is considered an employee during (1) the
22 first 60 days of disability leave, (2) the period, not to
23 exceed one year, in which his or her eligibility for disability
24 benefits is being considered by the board or reviewed by the
25 courts, and (3) the period he or she receives disability
26 benefits under the provisions of Section 15-152, workers'

1 compensation or occupational disease benefits, or disability
2 income under an insurance contract financed wholly or partially
3 by the employer.

4 (f) Absences without pay, other than formal leaves of
5 absence, of less than 30 calendar days, are not considered as
6 an interruption of a person's status as an employee. If such
7 absences during any period of 12 months exceed 30 work days,
8 the employee status of the person is considered as interrupted
9 as of the 31st work day.

10 (g) A staff member whose employment contract requires
11 services during an academic term is to be considered an
12 employee during the summer and other vacation periods, unless
13 he or she declines an employment contract for the succeeding
14 academic term or his or her employment status is otherwise
15 terminated, and he or she receives no earnings during these
16 periods.

17 (h) An individual who was a participating employee employed
18 in the fire department of the University of Illinois's
19 Champaign-Urbana campus immediately prior to the elimination
20 of that fire department and who immediately after the
21 elimination of that fire department became employed by the fire
22 department of the City of Urbana or the City of Champaign shall
23 continue to be considered as an employee for purposes of this
24 Article for so long as the individual remains employed as a
25 firefighter by the City of Urbana or the City of Champaign. The
26 individual shall cease to be considered an employee under this

1 subsection (h) upon the first termination of the individual's
2 employment as a firefighter by the City of Urbana or the City
3 of Champaign.

4 (i) An individual who is employed on a full-time basis as
5 an officer or employee of a statewide teacher organization that
6 serves System participants or an officer of a national teacher
7 organization that serves System participants may participate
8 in the System and shall be deemed an employee, provided that
9 (1) the individual has previously earned creditable service
10 under this Article, (2) the individual files with the System an
11 irrevocable election to become a participant before the
12 effective date of this amendatory Act of the 97th General
13 Assembly, (3) the individual does not receive credit for that
14 employment under any other Article of this Code, and (4) the
15 individual first became a full-time employee of the teacher
16 organization and becomes a participant before the effective
17 date of this amendatory Act of the 97th General Assembly. An
18 employee under this subsection (i) is responsible for paying to
19 the System both (A) employee contributions based on the actual
20 compensation received for service with the teacher
21 organization and (B) employer contributions equal to the normal
22 costs (as defined in Section 15-155) resulting from that
23 service; all or any part of these contributions may be paid on
24 the employee's behalf or picked up for tax purposes (if
25 authorized under federal law) by the teacher organization.

26 A person who is an employee as defined in this subsection

1 (i) may establish service credit for similar employment prior
2 to becoming an employee under this subsection by paying to the
3 System for that employment the contributions specified in this
4 subsection, plus interest at the effective rate from the date
5 of service to the date of payment. However, credit shall not be
6 granted under this subsection for any such prior employment for
7 which the applicant received credit under any other provision
8 of this Code, or during which the applicant was on a leave of
9 absence under Section 15-113.2.

10 (j) A person employed by the State Board of Higher
11 Education in a position with the Illinois Century Network as of
12 June 30, 2004 shall be considered to be an employee for so long
13 as he or she remains continuously employed after that date by
14 the Department of Central Management Services in a position
15 with the Illinois Century Network, the Bureau of Communication
16 and Computer Services, or, if applicable, any successor bureau
17 and meets the requirements of subsection (a).

18 (k) In the case of doubt as to whether any person is an
19 employee within the meaning of this Section or any rule adopted
20 by the Board, the decision of the Board shall be final.

21 (Source: P.A. 97-651, eff. 1-5-12.)

22 (40 ILCS 5/16-106) (from Ch. 108 1/2, par. 16-106)

23 (Text of Section WITHOUT the changes made by P.A. 98-599,
24 which has been held unconstitutional)

25 Sec. 16-106. Teacher. "Teacher": The following

1 individuals, provided that, for employment prior to July 1,
2 1990, they are employed on a full-time basis, or if not
3 full-time, on a permanent and continuous basis in a position in
4 which services are expected to be rendered for at least one
5 school term:

6 (1) Any educational, administrative, professional or
7 other staff employed in the public common schools included
8 within this system in a position requiring certification
9 under the law governing the certification of teachers;

10 (2) Any educational, administrative, professional or
11 other staff employed in any facility of the Department of
12 Children and Family Services or the Department of Human
13 Services, in a position requiring certification under the
14 law governing the certification of teachers, and any person
15 who (i) works in such a position for the Department of
16 Corrections, (ii) was a member of this System on May 31,
17 1987, and (iii) did not elect to become a member of the
18 State Employees' Retirement System pursuant to Section
19 14-108.2 of this Code; except that "teacher" does not
20 include any person who (A) becomes a security employee of
21 the Department of Human Services, as defined in Section
22 14-110, after June 28, 2001 (the effective date of Public
23 Act 92-14), or (B) becomes a member of the State Employees'
24 Retirement System pursuant to Section 14-108.2c of this
25 Code;

26 (3) Any regional superintendent of schools, assistant

1 regional superintendent of schools, State Superintendent
2 of Education; any person employed by the State Board of
3 Education as an executive; any executive of the boards
4 engaged in the service of public common school education in
5 school districts covered under this system of which the
6 State Superintendent of Education is an ex-officio member;

7 (4) Any employee of a school board association
8 operating in compliance with Article 23 of the School Code
9 who is certificated under the law governing the
10 certification of teachers, provided that he or she becomes
11 such an employee before the effective date of this
12 amendatory Act of the 99th General Assembly;

13 (5) Any person employed by the retirement system who:

14 (i) was an employee of and a participant in the
15 system on August 17, 2001 (the effective date of Public
16 Act 92-416), or

17 (ii) becomes an employee of the system on or after
18 August 17, 2001;

19 (6) Any educational, administrative, professional or
20 other staff employed by and under the supervision and
21 control of a regional superintendent of schools, provided
22 such employment position requires the person to be
23 certificated under the law governing the certification of
24 teachers and is in an educational program serving 2 or more
25 districts in accordance with a joint agreement authorized
26 by the School Code or by federal legislation;

1 (7) Any educational, administrative, professional or
2 other staff employed in an educational program serving 2 or
3 more school districts in accordance with a joint agreement
4 authorized by the School Code or by federal legislation and
5 in a position requiring certification under the laws
6 governing the certification of teachers;

7 (8) Any officer or employee of a statewide teacher
8 organization or officer of a national teacher organization
9 who is certified under the law governing certification of
10 teachers, provided: (i) the individual had previously
11 established creditable service under this Article, (ii)
12 the individual files with the system an irrevocable
13 election to become a member before the effective date of
14 this amendatory Act of the 97th General Assembly, (iii) the
15 individual does not receive credit for such service under
16 any other Article of this Code, and (iv) the individual
17 first became an officer or employee of the teacher
18 organization and becomes a member before the effective date
19 of this amendatory Act of the 97th General Assembly;

20 (9) Any educational, administrative, professional, or
21 other staff employed in a charter school operating in
22 compliance with the Charter Schools Law who is certificated
23 under the law governing the certification of teachers;

24 (10) Any person employed, on the effective date of this
25 amendatory Act of the 94th General Assembly, by the
26 Macon-Piatt Regional Office of Education in a

1 birth-through-age-three pilot program receiving funds
2 under Section 2-389 of the School Code who is required by
3 the Macon-Piatt Regional Office of Education to hold a
4 teaching certificate, provided that the Macon-Piatt
5 Regional Office of Education makes an election, within 6
6 months after the effective date of this amendatory Act of
7 the 94th General Assembly, to have the person participate
8 in the system. Any service established prior to the
9 effective date of this amendatory Act of the 94th General
10 Assembly for service as an employee of the Macon-Piatt
11 Regional Office of Education in a birth-through-age-three
12 pilot program receiving funds under Section 2-389 of the
13 School Code shall be considered service as a teacher if
14 employee and employer contributions have been received by
15 the system and the system has not refunded those
16 contributions.

17 An annuitant receiving a retirement annuity under this
18 Article or under Article 17 of this Code who is employed by a
19 board of education or other employer as permitted under Section
20 16-118 or 16-150.1 is not a "teacher" for purposes of this
21 Article. A person who has received a single-sum retirement
22 benefit under Section 16-136.4 of this Article is not a
23 "teacher" for purposes of this Article.

24 (Source: P.A. 97-651, eff. 1-5-12; 98-463, eff. 8-16-13.)".