

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
5 changing 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
10 performance of personal services or official duties out of
11 the 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 the
18 status of an employee with a municipality, or any
19 instrumentality thereof, or a participating
20 instrumentality, including alderpersons, county
21 supervisors and other persons (excepting those employed as
22 independent contractors) who are paid compensation, fees,
23 allowances or other emolument for official duties, and, in

counties, the several county fee offices.

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

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

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

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

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
5 to the extent of earnings that are not eligible for
6 inclusion 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
9 employed as a teacher of subjects in the Reserve Officers
10 Training Corps of any school and who is not certified
11 under the law governing the certification of teachers
12 shall be included 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 became a
2 participating employee under this Article before January
3 1, 2019 and who elects to participate in this Fund under
4 Section 3-109.1 of this Code, regardless of whether such
5 person continues to be employed as chief of police or is
6 employed in some other rank or capacity within the police
7 department, shall be an employee under this Article for so
8 long as such person is employed to perform police duties
9 by a participating municipality and has not lawfully
10 rescinded that election.

11 (b-5) Were not participating employees under this
12 Article before August 26, 2018 (the effective date of
13 Public Act 100-1097) and participated as a chief of police
14 in a fund under Article 3 and return to work in any
15 capacity with the police department, with any oversight of
16 the police department, or in an advisory capacity for the
17 police department with the same municipality with which
18 that pension was earned, regardless of whether they are
19 considered an employee of the police department or are
20 eligible for inclusion in the municipality's Article 3
21 fund.

22 (c) Are contributors to or eligible to contribute to a
23 Taft-Hartley pension plan to which the participating
24 municipality is required to contribute as the person's
25 employer based on earnings from the municipality. Nothing
26 in this paragraph shall affect service credit or

1 creditable service for any period of service prior to July
2 16, 2014 (the effective date of Public Act 98-712), and
3 this paragraph shall not apply to individuals who are
4 participating in the Fund prior to July 16, 2014 (the
5 effective date of Public Act 98-712).

6 Notwithstanding any other provision of this Section,
7 any person who is part of or becomes part of a bargaining
8 unit for which a participating municipality is required to
9 contribute to a Taft-Hartley pension plan under a
10 collective bargaining agreement or other written agreement
11 in effect on or before the effective date of this
12 amendatory Act of the 104th General Assembly shall be
13 deemed to be an employee within the meaning of this
14 subsection (1) for any period on and after July 16, 2014.

15 (d) Become an employee of any of the following
16 participating instrumentalities on or after January 1,
17 2017 (the effective date of Public Act 99-830): the
18 Illinois Municipal League; the Illinois Association of
19 Park Districts; the Illinois Supervisors, County
20 Commissioners and Superintendents of Highways Association;
21 an association, or not-for-profit corporation, membership
22 in which is authorized under Section 85-15 of the Township
23 Code; the United Counties Council; or the Will County
24 Governmental League.

25 (e) Are members of the Board of Trustees of the
26 Firefighters' Pension Investment Fund, as created under

1 Article 22C of this Code, in their capacity as members of
2 the Board of Trustees of the Firefighters' Pension
3 Investment Fund.

4 (f) Are members of the Board of Trustees of the Police
5 Officers' Pension Investment Fund, as created under
6 Article 22B of this Code, in their capacity as members of
7 the Board of Trustees of the Police Officers' Pension
8 Investment Fund.

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

1 participating employees in the Fund.

2 (Source: P.A. 102-15, eff. 6-17-21; 102-637, eff. 8-27-21;
3 102-813, eff. 5-13-22.)

4 Section 90. The State Mandates Act is amended by adding
5 Section 8.50 as follows:

6 (30 ILCS 805/8.50 new)

7 Sec. 8.50. Exempt mandate. Notwithstanding Sections 6 and
8 8 of this Act, no reimbursement by the State is required for
9 the implementation of any mandate created by this amendatory
10 Act of the 104th General Assembly.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.