



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4259

by Rep. Martin J. Moylan - Elaine Nekritz - Fred Crespo,
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SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Pension Code. In the Illinois Municipal Retirement Fund (IMRF) Article, provides that the definition of "employee" does not include a person who on or after the effective date becomes an employee of the following participating instrumentalities: the Illinois Municipal League; the Illinois Association of Park Districts; the Illinois Supervisors, County Commissioners and Superintendents of Highways Association; the United Counties Council; the Will County Governmental League; or certain other associations and not-for-profit corporations. In the State Universities Article, provides that a person who, on or after the effective date of the amendatory Act, becomes an employee of any association of community college boards organized under a certain provision of the Public Community College Act, the Association of Illinois Middle-Grade Schools, the Illinois Association of School Administrators, the Illinois Association for Supervision and Curriculum Development, the Illinois Principals Association, the Illinois Association of School Business Officials, or the Illinois Special Olympics shall not be deemed an employee under the Article. Provides that an individual that begins employment after the effective date of the amendatory Act with an entity not defined as an employer in the Article shall not be deemed an employee for the purposes of the Article. Provides that in the case of doubt as to whether any person is an employee, as defined in the Article, the decision of the Board of Trustees shall be final. In the Downstate Teacher Article, provides that an employee of a school board association who becomes an employee after the effective date of the amendatory Act is not a teacher for the purposes of the Article.

LRB099 13021 RPS 36896 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

A BILL FOR

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 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
17 earnings of any county fee office; and

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

1 employed as independent contractors) who are paid
2 compensation, fees, allowances or other emolument for
3 official duties, and, in counties, the several county
4 fee offices.

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

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

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

26 (a) Are eligible for inclusion under any of the

1 following laws:

2 1. "An Act in relation to an Illinois State
3 Teachers' Pension and Retirement Fund", approved May
4 27, 1915, as amended;

5 2. Articles 15 and 16 of this Code.

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

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

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

1 1, 1977 and did not elect, under Section 3-109 of this Act,
2 to participate in a police pension fund shall be an
3 "employee", and (ii) any chief of police who elects to
4 participate in this Fund under Section 3-109.1 of this
5 Code, regardless of whether such person continues to be
6 employed as chief of police or is employed in some other
7 rank or capacity within the police department, shall be an
8 employee under this Article for so long as such person is
9 employed to perform police duties by a participating
10 municipality and has not lawfully rescinded that election.

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

21 (d) Become an employee of any of the following
22 participating instrumentalities on or after the effective
23 date of this amendatory Act of the 99th General Assembly:
24 the Illinois Municipal League; the Illinois Association of
25 Park Districts; the Illinois Supervisors, County
26 Commissioners and Superintendents of Highways Association;

1 an association, or not-for-profit corporation, membership
2 in which is authorized under Section 85-15 of the Township
3 Code; the United Counties Council; or the Will County
4 Governmental League.

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

24 (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;
25 97-813, eff. 7-13-12; 98-712, eff. 7-16-14.)

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

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

4 Sec. 15-106. Employer. "Employer": The University of
5 Illinois, Southern Illinois University, Chicago State
6 University, Eastern Illinois University, Governors State
7 University, Illinois State University, Northeastern Illinois
8 University, Northern Illinois University, Western Illinois
9 University, the State Board of Higher Education, the Illinois
10 Mathematics and Science Academy, the University Civil Service
11 Merit Board, the Board of Trustees of the State Universities
12 Retirement System, the Illinois Community College Board,
13 community college boards, any association of community college
14 boards organized under Section 3-55 of the Public Community
15 College Act, the Board of Examiners established under the
16 Illinois Public Accounting Act, and, only during the period for
17 which employer contributions required under Section 15-155 are
18 paid, the following organizations: the alumni associations,
19 the foundations and the athletic associations which are
20 affiliated with the universities and colleges included in this
21 Section as employers. An individual that begins employment
22 after the effective date of this amendatory Act of the 99th
23 General Assembly with an entity not defined as an employer in
24 this Section shall not be deemed an employee for the purposes
25 of this Article with respect to that employment and shall not
26 be eligible to participate in the System with respect to that

1 employment; provided, however, that those individuals who are
2 both employed and already participants in the System on the
3 effective date of this amendatory Act of the 99th General
4 Assembly shall be allowed to continue as participants in the
5 System for the duration of that employment and continue to earn
6 service credit.

7 Notwithstanding any provision of law to the contrary, an
8 individual who begins employment with any of the following
9 employers on or after the effective date of this amendatory Act
10 of the 99th General Assembly shall not be deemed an employee
11 and shall not be eligible to participate in the System with
12 respect to that employment: any association of community
13 college boards organized under Section 3-55 of the Public
14 Community College Act, the Association of Illinois
15 Middle-Grade Schools, the Illinois Association of School
16 Administrators, the Illinois Association for Supervision and
17 Curriculum Development, the Illinois Principals Association,
18 the Illinois Association of School Business Officials, or the
19 Illinois Special Olympics; provided, however, that those
20 individuals who are both employed and already participants in
21 the System on the effective date of this amendatory Act of the
22 99th General Assembly shall be allowed to continue as
23 participants in the System for the duration of that employment
24 and continue to earn service credit.

25 A department as defined in Section 14-103.04 is an employer
26 for any person appointed by the Governor under the Civil

1 Administrative Code of Illinois who is a participating employee
2 as defined in Section 15-109. The Department of Central
3 Management Services is an employer with respect to persons
4 employed by the State Board of Higher Education in positions
5 with the Illinois Century Network as of June 30, 2004 who
6 remain continuously employed after that date by the Department
7 of Central Management Services in positions with the Illinois
8 Century Network, the Bureau of Communication and Computer
9 Services, or, if applicable, any successor bureau.

10 The cities of Champaign and Urbana shall be considered
11 employers, but only during the period for which contributions
12 are required to be made under subsection (b-1) of Section
13 15-155 and only with respect to individuals described in
14 subsection (h) of Section 15-107.

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

17 (40 ILCS 5/15-107) (from Ch. 108 1/2, par. 15-107)

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

20 Sec. 15-107. Employee.

21 (a) "Employee" means any member of the educational,
22 administrative, secretarial, clerical, mechanical, labor or
23 other staff of an employer whose employment is permanent and
24 continuous or who is employed in a position in which services
25 are expected to be rendered on a continuous basis for at least

1 4 months or one academic term, whichever is less, who (A)
2 receives payment for personal services on a warrant issued
3 pursuant to a payroll voucher certified by an employer and
4 drawn by the State Comptroller upon the State Treasurer or by
5 an employer upon trust, federal or other funds, or (B) is on a
6 leave of absence without pay. Employment which is irregular,
7 intermittent or temporary shall not be considered continuous
8 for purposes of this paragraph.

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

10 (1) is a student enrolled in and regularly attending
11 classes in a college or university which is an employer,
12 and is employed on a temporary basis at less than full
13 time;

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

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

18 (4) is eligible to participate in the Federal Civil
19 Service Retirement System and is currently making
20 contributions to that system based upon earnings paid by an
21 employer;

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

25 (6) is hired after June 30, 1979 as a public service
26 employment program participant under the Federal

1 Comprehensive Employment and Training Act and receives
2 earnings in whole or in part from funds provided under that
3 Act; or

4 (7) is employed on or after July 1, 1991 to perform
5 services that are excluded by subdivision (a)(7)(f) or
6 (a)(19) of Section 210 of the federal Social Security Act
7 from the definition of employment given in that Section (42
8 U.S.C. 410).

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

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

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

25 (e) A participant is considered an employee during (1) the
26 first 60 days of disability leave, (2) the period, not to

1 exceed one year, in which his or her eligibility for disability
2 benefits is being considered by the board or reviewed by the
3 courts, and (3) the period he or she receives disability
4 benefits under the provisions of Section 15-152, workers'
5 compensation or occupational disease benefits, or disability
6 income under an insurance contract financed wholly or partially
7 by the employer.

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

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

21 (h) An individual who was a participating employee employed
22 in the fire department of the University of Illinois's
23 Champaign-Urbana campus immediately prior to the elimination
24 of that fire department and who immediately after the
25 elimination of that fire department became employed by the fire
26 department of the City of Urbana or the City of Champaign shall

1 continue to be considered as an employee for purposes of this
2 Article for so long as the individual remains employed as a
3 firefighter by the City of Urbana or the City of Champaign. The
4 individual shall cease to be considered an employee under this
5 subsection (h) upon the first termination of the individual's
6 employment as a firefighter by the City of Urbana or the City
7 of Champaign.

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

1 service; all or any part of these contributions may be paid on
2 the employee's behalf or picked up for tax purposes (if
3 authorized under federal law) by the teacher organization.

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

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

22 (k) In the case of doubt as to whether any person is an
23 employee within the meaning of this Section, the decision of
24 the Board shall be final.

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

1 (40 ILCS 5/16-106) (from Ch. 108 1/2, par. 16-106)
2 (Text of Section WITHOUT the changes made by P.A. 98-599,
3 which has been held unconstitutional)
4 Sec. 16-106. Teacher. "Teacher": The following
5 individuals, provided that, for employment prior to July 1,
6 1990, they are employed on a full-time basis, or if not
7 full-time, on a permanent and continuous basis in a position in
8 which services are expected to be rendered for at least one
9 school term:

10 (1) Any educational, administrative, professional or
11 other staff employed in the public common schools included
12 within this system in a position requiring certification
13 under the law governing the certification of teachers;

14 (2) Any educational, administrative, professional or
15 other staff employed in any facility of the Department of
16 Children and Family Services or the Department of Human
17 Services, in a position requiring certification under the
18 law governing the certification of teachers, and any person
19 who (i) works in such a position for the Department of
20 Corrections, (ii) was a member of this System on May 31,
21 1987, and (iii) did not elect to become a member of the
22 State Employees' Retirement System pursuant to Section
23 14-108.2 of this Code; except that "teacher" does not
24 include any person who (A) becomes a security employee of
25 the Department of Human Services, as defined in Section
26 14-110, after June 28, 2001 (the effective date of Public

1 Act 92-14), or (B) becomes a member of the State Employees'
2 Retirement System pursuant to Section 14-108.2c of this
3 Code;

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

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

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

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

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

23 (6) Any educational, administrative, professional or
24 other staff employed by and under the supervision and
25 control of a regional superintendent of schools, provided
26 such employment position requires the person to be

1 certificated under the law governing the certification of
2 teachers and is in an educational program serving 2 or more
3 districts in accordance with a joint agreement authorized
4 by the School Code or by federal legislation;

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

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

24 (9) Any educational, administrative, professional, or
25 other staff employed in a charter school operating in
26 compliance with the Charter Schools Law who is certificated

1 under the law governing the certification of teachers;

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

21 An annuitant receiving a retirement annuity under this
22 Article or under Article 17 of this Code who is employed by a
23 board of education or other employer as permitted under Section
24 16-118 or 16-150.1 is not a "teacher" for purposes of this
25 Article. A person who has received a single-sum retirement
26 benefit under Section 16-136.4 of this Article is not a

1 "teacher" for purposes of this Article.

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

1 INDEX

2 Statutes amended in order of appearance

3	40 ILCS 5/7-109	from Ch. 108 1/2, par. 7-109
4	40 ILCS 5/15-106	from Ch. 108 1/2, par. 15-106
5	40 ILCS 5/15-107	from Ch. 108 1/2, par. 15-107
6	40 ILCS 5/16-106	from Ch. 108 1/2, par. 16-106