

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 3-109.1, 3-124.1, and 7-109 and by adding Section  
6 3-109.4 as follows:

7 (40 ILCS 5/3-109.1) (from Ch. 108 1/2, par. 3-109.1)

8 Sec. 3-109.1. Chief of police.

9 (a) Except as provided in subsection (a-5), beginning  
10 ~~Beginning~~ January 1, 1990, any person who is employed as the  
11 chief of police of a "participating municipality" as defined in  
12 Section 7-106 of this Code, may elect to participate in the  
13 Illinois Municipal Retirement Fund rather than in a fund  
14 created under this Article 3. Except as provided in subsection  
15 (b), this election shall be irrevocable, and shall be filed in  
16 writing with the Board of the Illinois Municipal Retirement  
17 Fund.

18 (a-5) On or after January 1, 2019, a person may not elect  
19 to participate in the Illinois Municipal Retirement Fund with  
20 respect to his or her employment as the chief of police of a  
21 participating municipality, unless that person became a  
22 participating employee in the Illinois Municipal Retirement  
23 Fund before January 1, 2019.

1           (b) Until January 1, 1999, a chief of police who has  
2 elected under this Section to participate in IMRF rather than a  
3 fund created under this Article may elect to rescind that  
4 election and transfer his or her participation to the police  
5 pension fund established under this Article by the employing  
6 municipality. The chief must notify the boards of trustees of  
7 both funds in writing of his or her decision to rescind the  
8 election and transfer participation. A chief of police who  
9 transfers participation under this subsection (b) shall not be  
10 deemed ineligible to participate in the police pension fund by  
11 reason of having failed to apply within the 3-month period  
12 specified in Section 3-106.

13       (Source: P.A. 90-460, eff. 8-17-97.)

14           (40 ILCS 5/3-109.4 new)

15           Sec. 3-109.4. Defined contribution plan for certain police  
16 officers.

17           (a) Each municipality shall establish a defined  
18 contribution plan that aggregates police officer and employer  
19 contributions in individual accounts used for retirement. The  
20 defined contribution plan, including both police officer and  
21 employer contributions, established by the municipality must,  
22 at a minimum: meet the safe harbor provisions of the Internal  
23 Revenue Code of 1986, as amended; be a qualified plan under the  
24 Internal Revenue Code of 1986, as amended; and comply with all  
25 other applicable laws, rules, and regulations. Contributions

1 shall vest immediately upon deposit in the police officer's  
2 account.

3 A police officer who participates in the defined  
4 contribution plan under this Section may not earn creditable  
5 service or otherwise participate in the defined benefit plan  
6 offered by his or her employing municipality, except as an  
7 annuitant in another fund or as a survivor, while he or she is  
8 a participant in the defined contribution plan. The defined  
9 contribution plan under this Section shall not be construed to  
10 be a pension, annuity, or other defined benefit under this  
11 Code.

12 (b) If a police officer who has more than 10 years of  
13 creditable service in a fund enters active service with a  
14 different municipality, he or she may elect to participate in  
15 the defined contribution plan under this Section in lieu of the  
16 defined benefit plan.

17 A police officer who has elected under this subsection to  
18 participate in the defined contribution plan may, in writing,  
19 rescind that election in accordance with the rules of the  
20 board. Any employer contributions, and the earnings thereon,  
21 shall remain vested in the police officer's account. A police  
22 officer who rescinds the election may begin participating in  
23 the defined benefit plan on the first day of the month  
24 following the rescission.

25 (c) As used in this Section, "defined benefit plan" means  
26 the retirement plan available to police officers under this

1 Article who do not participate in the defined contribution plan  
2 under this Section.

3 (40 ILCS 5/3-124.1) (from Ch. 108 1/2, par. 3-124.1)

4 Sec. 3-124.1. Re-entry into active service.

5 (a) If a police officer who is receiving pension payments  
6 other than as provided in Section 3-109.3 re-enters active  
7 service, pension payment shall be suspended while he or she is  
8 in service. When he or she again retires, pension payments  
9 shall be resumed. If the police officer remains in service  
10 after re-entry for a period of less than 5 years, the pension  
11 shall be the same as upon first retirement. If the officer's  
12 service after re-entry is at least 5 years and the officer  
13 makes the required contributions during the period of re-entry,  
14 his or her pension shall be recomputed by taking into account  
15 the additional period of service and salary.

16 (b) If a police officer who first becomes a member on or  
17 after January 1, 2019 is receiving pension payments (other than  
18 as provided in Section 3-109.3) and re-enters active service  
19 with any municipality that has established a pension fund under  
20 this Article, that police officer may continue to receive  
21 pension payments while he or she is in active service, but  
22 shall only participate in a defined contribution plan  
23 established by the municipality pursuant to Section 3-109.4 and  
24 may not establish creditable service in the pension fund  
25 established by that municipality or have his or her pension

1 recomputed.

2 (Source: P.A. 91-939, eff. 2-1-01.)

3 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

4 Sec. 7-109. Employee.

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

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

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

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

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

20 1. "An Act in relation to an Illinois State  
21 Teachers' Pension and Retirement Fund", approved May  
22 27, 1915, as amended;

23 2. Articles 15 and 16 of this Code.

24 However, such persons shall be included as employees to  
25 the extent of earnings that are not eligible for inclusion  
26 under the foregoing laws for services not of an

1 instructional nature of any kind.

2 However, any member of the armed forces who is employed  
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  
13 such pension fund, they shall be included within this  
14 Article; provided, that such persons shall not be excluded  
15 to the extent of concurrent service and earnings not  
16 designated as being for police or fire protection duties.  
17 However, (i) any head of a police department who was a  
18 participant under this Article immediately before October  
19 1, 1977 and did not elect, under Section 3-109 of this Act,  
20 to participate in a police pension fund shall be an  
21 "employee", and (ii) any chief of police who became a  
22 participating employee under this Article before January  
23 1, 2019 and who elects to participate in this Fund under  
24 Section 3-109.1 of this Code, regardless of whether such  
25 person continues to be employed as chief of police or is  
26 employed in some other rank or capacity within the police

1 department, shall be an employee under this Article for so  
2 long as such person is employed to perform police duties by  
3 a participating municipality and has not lawfully  
4 rescinded that election.

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

15 (d) Become an employee of any of the following  
16 participating instrumentalities on or after the effective  
17 date of this amendatory Act of the 99th General Assembly:  
18 the 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 (3) All persons, including, without limitation, public  
26 defenders and probation officers, who receive earnings from

1 general or special funds of a county for performance of  
2 personal services or official duties within the territorial  
3 limits of the county, are employees of the county (unless  
4 excluded by subsection (2) of this Section) notwithstanding  
5 that they may be appointed by and are subject to the direction  
6 of a person or persons other than a county board or a county  
7 officer. It is hereby established that an employer-employee  
8 relationship under the usual common law rules exists between  
9 such employees and the county paying their salaries by reason  
10 of the fact that the county boards fix their rates of  
11 compensation, appropriate funds for payment of their earnings  
12 and otherwise exercise control over them. This finding and this  
13 amendatory Act shall apply to all such employees from the date  
14 of appointment whether such date is prior to or after the  
15 effective date of this amendatory Act and is intended to  
16 clarify existing law pertaining to their status as  
17 participating employees in the Fund.

18 (Source: P.A. 98-712, eff. 7-16-14; 99-830, eff. 1-1-17.)

19 Section 90. The State Mandates Act is amended by adding  
20 Section 8.41 as follows:

21 (30 ILCS 805/8.41 new)

22 Sec. 8.41. Exempt mandate. Notwithstanding Sections 6 and 8  
23 of this Act, no reimbursement by the State is required for the  
24 implementation of any mandate created by this amendatory Act of

1 the 100th General Assembly.

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.