AN ACT concerning public employee benefits.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Pension Code is amended by changing Section 7-109 as follows:

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

Sec. 7-109. Employee.

(1) "Employee" means any person who:

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

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or any instrumentality thereof, or a participating instrumentality, including alderpersons, county supervisors and other persons (excepting those employed as independent contractors) who are paid compensation, fees, 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

Teachers' Pension and Retirement Fund", approved May 27, 1915, as amended;

2. Articles 15 and 16 of this Code.

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

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

(b) Are designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties, except that when such persons are the heads of the police or fire department and are not eligible to be included within any such pension fund, they shall be included within this Article; provided, that such persons shall not be excluded to the extent of concurrent service and earnings not designated as being for police or fire protection duties. However, (i) any head of a police department who was a participant under this Article immediately before October 1, 1977 and did not elect, under Section 3-109 of this Act, to participate in a police pension fund shall be an "employee", and (ii) any chief of police who became a participating employee under this Article before January 1, 2019 and who elects to participate in this Fund under Section 3-109.1 of this Code, regardless of whether such person continues to be employed as chief of police or is employed in some other rank or capacity within the police department, shall be an employee under this Article for so long as such person is employed to perform police duties by a participating municipality and has not lawfully rescinded that election.

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

(c) Are contributors to or eligible to contribute to a Taft-Hartley pension plan to which the participating municipality is required to contribute at a rate greater than $5 per hour worked as the person's employer based on earnings from the municipality. Nothing in this paragraph shall affect service credit or creditable service for any period of service prior to July 16, 2014 (the effective date of Public Act 98-712), and this paragraph shall not apply to individuals who are participating in the Fund prior to July 16, 2014 (the effective date of Public Act 98-712).

Any person for whom a participating municipality contributed to both the Fund and a Taft-Hartley pension plan at a rate equal to or less than $5 per hour worked since July 16, 2014 shall be deemed an employee under this Article from July 16, 2014 through the effective date of this amendatory Act of the 104th General Assembly. After the effective date of this amendatory Act of the 104th General Assembly, a person shall be deemed an employee under this Article if the participating municipality pays an hourly contribution rate to a Taft-Hartley pension plan that is equal to or less than $5 per hour worked.

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

Governmental League.

(e) Are members of the Board of Trustees of the Firefighters' Pension Investment Fund, as created under Article 22C of this Code, in their capacity as members of the Board of Trustees of the Firefighters' Pension Investment Fund.

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

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

date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund.
(Source: P.A. 102-15, eff. 6-17-21; 102-637, eff. 8-27-21; 102-813, eff. 5-13-22.)

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

(30 ILCS 805/8.50 new)

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