

**PRESENTERS:**  
**“SURS LEGISLATION UPDATE”**  
**– JOSEPH PERKOSKI**

**"COMMUNITY COLLEGE FUNDS – LAWFUL EXPENDITURES AND  
PRACTICAL CONSIDERATIONS”**  
**– MATTHEW GARDNER**

**ICCCFO SPRING CONFERENCE 2018**

**STARVED ROCK CONFERENCE CENTER**  
**APRIL 18<sup>TH</sup> ■ OGLESBY, IL**

## SURS LEGISLATION UPDATE<sup>1</sup>

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### I. NEW PUBLIC ACTS

#### A. Trailer Bill – Tier Clarification

1. The Act: Public Act 100-0563 was signed into law by Governor Rauner on December 8, 2017. The Act took effect that same day.
2. Tier Clarification: Public Act 100-0563 clarifies that individuals who first become members of SURS on or after January 1, 2011, and prior to the implementation date of the optional hybrid plan under Public Act 100-0023 will participate in SURS as Tier II members.<sup>2</sup>

#### B. Return to Work for Affected Annuitants

1. The Act: Public Act 100-0556 was signed into law by Governor Rauner on December 8, 2017. The Act took effect that same day.
2. Background: Public Act 100-0556 builds upon the return-to-work regulations established under Public Acts 97-0968 and 98-1144:
  - a. Public Act 97-0968 created the return-to-work law for affected annuitants and required that a SURS-covered employer pay a contribution to SURS upon hiring a SURS affected annuitant;
  - b. Public Act 98-1144 created an exemption to Public Act 97-0968 to allow SURS-covered employers to avoid paying the employer contribution to SURS retirees who receive annualized retirement annuities of less than \$10,000. This exemption, however, became effective on June 1, 2015 and did not apply to SURS retirees with annualized retirement annuities of less than \$10,000 who became affected annuitants between August 1, 2013 and May 31, 2015.
3. Expanded Exemption: Public Act 100-0556 allows SURS retirees who became affected annuitants between August 1, 2013 and May 31, 2015 and who receive annualized retirement annuities of less than \$10,000, to return to work with a SURS-covered employer without the employer having to pay a contribution to SURS. It therefore expands the exemption in Public

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<sup>1</sup> This information is derived from SURS' legislation review and updates. Complete summaries of all legislation affecting SURS members and their retirement benefits can be found on the SURS website at [www.surs.com/legislation](http://www.surs.com/legislation).

<sup>2</sup> Pursuant to Public Act 100-0023, Tier II is closed to individuals who first became SURS members on or after January 6, 2018, thereby leaving these individuals without a "Tier" assignment.

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Act 98-0114 to an expanded group of affected annuitants.

4. Other Substantive Changes: Public Act 100-556 also authorizes SURS to issue subpoenas in order to, among other things, collect monies owed, obtain personal identifying information to administer benefits, and determine the death of an actual or potential benefit recipient.
5. Return to Work in Practice: Robbins Schwartz recently achieved an important victory for Oakton Community College with respect to SURS return to work regulations in *Filipek, Krzyzak, and Dayton, et al. v. Oakton Community College District No. 535*.
  - a. In November 2014, Oakton announced its decision to discontinue the employment of all SURS annuitants effective July 1, 2015. The basis for this administrative decision included the challenges in maintaining a system to monitor annuitants' earnings, concerns about SURS' administration and enforcement of the return-to-work law, and the risk of penalties which the College, had in fact, incurred after inadvertently employing several affected annuitants in Fall 2014. Ultimately, over 80 SURS annuitants, all of whom were age 55 or older, lost their jobs as a result of Oakton's decision.
  - b. The lawsuits, brought by non-reemployed SURS annuitant adjunct faculty members, asserted that the College's decision not to employ SURS annuitants violated the Age Discrimination in Employment Act ("ADEA") and the Illinois Human Rights Act ("IHRA"). In addition, Plaintiffs alleged that the College's decision not to employ any SURS annuitants violated the U.S. and Illinois Constitution and constituted retaliatory discharge.
  - c. The District Court granted summary judgment for the College in what became a consolidated class action case. The Court found that Plaintiffs failed to state a case of age discrimination based on disparate treatment as they failed to cite any similarly situated younger employees who were treated less favorably.
  - d. The Court also ruled that while Plaintiffs may be able to state a case for age discrimination based on the disparate impact the College's decision had on older workers, the College clearly articulated a "reasonable factor other than age" for its decision, namely, the burden associated with continued monitoring of SURS annuitants' employment, and the risk of financial penalties resulting from inadvertent employment of "affected annuitants".

### **C. Expatriated Entities**

1. The Act: Public Act 100-0551 became law on November 9, 2017 after both houses overrode the Governor's veto. The Act took effect on January 1, 2018.
2. Prohibition on Investing in Expatriated Entities: Public Act 100-0551

prohibits retirement systems from investing in expatriated entities.

- a. An “expatriated entity” is defined as “a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of Section 835 of the Homeland Security Act of 2002, 6 U.S.C. 395(b), or any subsidiary of such an entity.
- b. By April 1<sup>st</sup> of each year, retirement systems must report to the Illinois Investment Policy Board information pertaining to their shareholder activism and its impact.

#### **D. Survivors Felony Forfeiture**

1. The Act: Public Act 100-0334 was signed into law by Governor Rauner on August 25, 2017. The Act took effect that same day.
2. Felony Forfeiture: Public Act 100-0334 prohibits any benefits from being paid to a person who is convicted of a felony related to, arising out of, or in connection with a person’s service as an employee under SURS.
3. Affected Group: Public Act 100-0334 applies to individuals who first became SURS participants on or after August 25, 2017.

## **II. PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS<sup>3</sup> AND ACCELERATED BENEFIT PAYMENT OPTIONS**

### **A. HB 4027 – Pension Reform**

1. The Bill: HB 4027 was filed on March 24, 2017 and seeks to amend the Illinois Pension Code.
2. Status: HB 4027 was re-referred to the House Rules Committee on January 3, 2018.
3. Optional Hybrid Plan: HB 4027 creates an optional hybrid plan for individuals who first become SURS participants on or after 6 months after this legislation’s effective date (and who are not participants in the Self-Managed Plan). These individuals can irrevocably elect to participate in Tier II within 30 days after becoming a participant.
4. Defined Benefit Portion of Hybrid Plan: Under the defined benefit portion of the hybrid plan:
  - a. Final average salary equals the average monthly (or annual) salary during the period of service in which earnings were the highest during the last 120 months (or 10 years) of service.
  - b. Pensionable earnings are capped at the federal Social Security

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<sup>3</sup> Please note that Public Acts 100-0021 (SB 0006) and 100-0023 (SB 0042), both effective July 6, 2017, provide for the creation of an optional hybrid plan. The optional hybrid plan is currently the default plan for new hires. However, there is also the option to irrevocably elect a Tier II plan or the Self-Managed Plan.

Wage Base.

- c. Age and service credits for retirement are the normal Social Security retirement age applicable to that member, but no earlier than age 67, with 10 years of service credit.
  - d. Retirement annuities are calculated using the following formula: 1.25% x each year of service credit x FAS (final average salary).
  - e. Automatic annual increases are applied beginning one year after retirement, calculated at  $\frac{1}{2}$  of the percentage increase in the CPI-W.
  - f. Survivor benefits are equal to  $66 \frac{2}{3}$  % of the member's retirement annuity on the date of death, or  $66 \frac{2}{3}$  % of the member's earned annuity without an age reduction if the member was not retired on the date of death.
  - g. Employee contributions are equal to the lower of 6.2% of salary or the normal cost of benefits under the defined benefit portion of the plan.
5. Defined Contribution Portion of Hybrid Plan: Under the defined contribution portion of the hybrid plan:
- a. Employee contributions are equal to a minimum of 4% of salary.
  - b. Employer contributions for employees with at least one year of service with the same employer are equal to a rate set for individual employees, but no higher than 6% of salary and no lower than 2 percent of salary.
  - c. The participant vests in employer contributions when they are paid into his or her account.
  - d. The plan must provide a variety of investment options and a variety of options for payouts to retirees and their survivors.
6. Future Benefits: Future benefits under the optional hybrid plan can be modified. Benefit increases under the optional hybrid plan cannot take effect unless they are approved by a resolution or ordinance of the governing body of the unit of local government responsible for those employees.
- a. The employer must contribute an amount equal to the normal cost of the defined benefit portion of the optional hybrid plan, minus the employee contributions, plus 2%.
  - b. The employer must contribute an amount equal to the employer portion of the defined contribution portion of the optional hybrid plan, as set on an individual employee basis.

- c. SURS must annually certify the amount of unfunded liability accrued in each employer's account to be paid by the employer so that SURS becomes 90% funded by fiscal year 2045.
7. Tier I Offer and Consideration Pension Reform: HB 4027 requires that each Tier I employee elects one of two options:
- a. To accept a reduced and delayed automatic annual increase in retirement (the lesser of 3% or 1.2 of the increase in CPI-U, non-compounded, beginning the January on or after the earlier of age 67 or five years after retirement); or
  - b. To keep the current Tier I automatic annual increase<sup>4</sup> in retirement (3% compounded, beginning the January after retirement).
8. Accelerated Pension Benefit Payment Option: HB 4027 creates an accelerated pension benefit payment option for the first 10% of eligible SURS members each year.
- a. Eligible SURS Member: An eligible SURS member has terminated services, accrued the necessary service credit for retirement, has not received a SURS retirement annuity, does not have a QILDRO in effect against him or her under SURS, and is not a participant in the Self-Managed Plan.
  - b. SURS Obligations: By January 1, 2018, and annually thereafter, SURS must calculate the net present value of pension benefits for each eligible person. SURS must give each eligible person the opportunity to irrevocably elect to receive an accelerated pension benefit payment equal to 70% of the net present value of his or her pension benefits in lieu of receiving any pension benefit from SURS.
  - c. Other Requirements:
    - i. The accelerated pension benefit payment must be rolled into another retirement plan or account qualified under the IRC.
    - ii. Upon receipt of an accelerated pension benefit payment, credit and creditable service under SURS are terminated. If the member subsequently returns to active service under SURS, then any subsequent pension benefits are based on the credits and creditable service accrued after the return to active service.
    - iii. The accelerated pension benefit payment cannot be repaid to SURS, and previously terminated credits and creditable service cannot be reinstated under SURS. A SURS member

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<sup>4</sup> A Tier I employee who fails to make an election within the required time period maintains the current Tier I automatic annual increase in retirement.

who receives an accelerated pension benefit payment will still receive applicable retiree health insurance benefits.

9. Voluntary Defined Contribution Plan: HB 4027 requires SURS to provide a voluntary defined contribution plan for up to 5% of Tier I employees by July 1, 2018.
  - a. Under the defined contribution plan, a Tier I employee could elect to stop accruing benefits in the defined benefit plan and start accruing benefits for future service in the defined contribution plan.
  - b. Participants in the defined contribution plan pay employee contributions at the same rate as other participants in SURS. State contributions to the defined contribution plan are made at a uniform rate, no higher than the employer's normal cost for Tier I employees in the defined benefit plan for that year and no lower than 3% of earnings. The rate of state contributions to the defined contribution plan is adjusted annually.
  - c. The defined contribution plan requires 5 years of service in order for the participant to vest in state contributions. Failure to vest in state contributions results in the forfeiture of state contributions and any earnings on the state contributions.
10. State Funding Changes: HB 4027 makes three changes to the funding formula for SURS:
  - a. It requires the state contribution for fiscal year 2018 through fiscal year 2045 to be based on total payroll (which includes payroll that is not pensionable), but excluding payroll attributable to participants in the voluntary defined contribution plan;
  - b. It requires that any increases or decreases attributable to changes in the System's actuarial and investment assumptions be phased-in over a five-year period beginning in fiscal year 2018; and
  - c. It requires that state contributions for the fiscal years 2018 and 2019 be recertified based on changes made by the legislation.
11. Employer Funding Changes: HB 4027 provides that, for academic years beginning on or after July 1, 2018, if a participant's earnings exceed the amount of his or her earnings with the same employer for the previous academic year by more than the increase in CPI-U for any year during the final rate of earnings period, then the employer must pay the present value of the resulting increase in benefits to SURS.<sup>5</sup>
  - a. Earnings increases under contracts or collective bargaining

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<sup>5</sup> Currently, if a participant's earnings exceed the amount of his or her earnings with the same employer for the previous academic year by more than 6% during the final rate of earnings period, then the employer must pay the present value of the resulting increase in benefits to SURS.

agreements entered into, amended, or renewed before the effective date of the legislation are excluded from this provision.

- b. For academic years beginning on or after July 1, 2018, if a participant's earnings exceed \$140,000, then the employer must pay a contribution to SURS for the portion of earnings in excess of that amount. The employer contribution equals the amount of earnings in excess of \$140,000 multiplied by the level percentage of payroll needed for SURS to become 90% funded by fiscal year 2045.

## **B. HB 4839 – Pension Reform<sup>6</sup>**

1. The Bill: HB 4839 was filed on February 14, 2018 and seeks to amend the Illinois Pension Code.
2. Status: HB 4839 was assigned to the House Personnel & Pensions Committee on March 21, 2018.
3. Restrictions on Pensionable Earnings and Service Credit: HB 4839 prohibits payments for unused sick or vacation time from counting toward the final rate of earnings of individuals who first become participants in SURS on or after the effective date of the legislation. HB 4839 also prohibits individuals who first become participants in SURS on or after the effective date of the legislation from receiving service credit for unused sick leave.
4. Employee Non-Participation in SURS: HB 4839 provides that a person is not required to participate in SURS.
  - a. An active employee may terminate his or her participation in SURS (including active participation in the Tier III Plan, if applicable) by notifying SURS in writing.
  - b. An active employee terminating participation in SURS is entitled to a refund of his or her contributions (other than contributions to the Self-Managed Plan or the Tier III Plan) minus the benefits received prior to the termination of participation.
5. Tier III Defined Contribution Plan: HB 4839 requires SURS to prepare and implement a Tier III defined contribution plan by July 1, 2019.
  - a. The Tier III defined contribution plan must utilize the framework of the Self-Managed Plan and must attempt to adapt the benefits and structure of the Self-Managed Plan to the Tier III plan. All persons who first become SURS participants on or after July 1, 2019 must

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<sup>6</sup> Note that many of the provisions in HB 4829 mirror those in HB 4027, described above.

participate in the Tier III defined contribution plan.<sup>7</sup>

- b. Tier I participants and Tier II participants may make a voluntary, irrevocable election to stop accruing benefits (or terminate all participation) in the defined benefit plan and start accruing benefits for future service in the Tier III defined contribution plan.
  - c. Participant contributions to the Tier III defined contribution plan are at the rate of 8% of earnings. State contributions to the Tier III defined contribution plan are at the rate of 7.6% of earnings (minus an amount to cover the cost of any defined disability benefits offered under the defined contribution plan).
  - d. Tier III participants must have one year of service credit in the defined contribution plan to vest in state contributions. Failure to vest results in the forfeiture of state contributions and any earnings thereon.
6. Accelerated Pension Benefit Payment Option:<sup>8</sup> HB 4839 creates an accelerated pension benefit payment option for eligible SURS members, who may elect the accelerated pension benefit option between January 1, 2019 and July 1, 2019.
- a. Eligible SURS Members: An eligible SURS member has terminated service, has accrued the necessary service credit for retirement, has not received a retirement annuity from SURS, does not have a QILDRO in effect against him or her under SURS, and is not a participant in the Self-Managed Plan.
  - b. SURS Obligations: By January 1, 2019, SURS must calculate the net present value of pension benefits for each eligible person. SURS must offer each eligible person the opportunity to irrevocably elect to receive an accelerated pension benefit payment equal to 70% of the net present value of his or her pension benefits in lieu of receiving any pension benefit from SURS.
  - c. Other Provisions:
    - i. The accelerated pension benefit payment must be rolled into another retirement plan or an IRC-qualified account.
    - ii. Upon receipt of an accelerated pension benefit payment, credits and creditable service under SURS are

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<sup>7</sup> Participants in the Tier III defined contribution plan will receive any applicable retiree health insurance benefits.

<sup>8</sup> The accelerated pension benefit payment option under HB 4829 closely mirrors the proposed accelerated pension benefit payment option under HB4027.

terminated. If the member subsequently returns to active service under SURS, then any subsequent pension benefits are based on the credits and creditable service accrued after the return to active service.

- iii. The accelerated pension benefit payment cannot be repaid to SURS. Previously terminated credits and creditable service cannot be reinstated under SURS. A SURS member who receives an accelerated pension benefit payment will still receive any applicable retiree health insurance benefits.

7. Employer Funding Changes: HB 4839 ends the requirement that the employer pay the present value of the increase in benefits resulting from earnings increases above 6% during the final rate of earnings period to SURS. Rather, HB 4839 provides that, beginning in fiscal year 2020, if a contract or collective bargaining agreement entered into, amended, or renewed on or after the effective date of the legislation provides for earnings to exceed the salaries provided under the preceding contract or collective bargaining agreement, then the employer must pay the current value of the projected amount of the resulting increase in benefits, reflecting whether the participants are Tier I or Tier II members, to SURS.
8. Repeal of Public Act 100-0023: HB 4839 repeals many of the provisions of Public Act 100-0023 (SB 0042), which created the optional hybrid plan. It does not repeal the provisions that became effective on July 6, 2017, which were: the Governor's salary rule, the smoothing of the costs of any changes in actuarial assumptions, and the recertification of the FY 2018 state contribution.

### **C. HB 5472 – Accelerated Pension Benefit Payment Option**

1. The Bill: HB 5472 was filed on February 16, 2018 and seeks to amend the Illinois Pension Code.
2. Status: HB 5472 was referred to the House Rules Committee on February 16, 2018.
3. Proposed Changes: HB 5472 creates an accelerated pension benefit payment option for retirement-eligible Tier I members.
  - a. Eligible SURS Member: An eligible SURS member is a Tier I member, has submitted an application for a retirement annuity under SURS, meets the age and service credit requirements for retirement under SURS, has not received any retirement annuity from SURS, is not a participant in the Self-Managed Plan, and does not have a QILDRO in effect against him or her under SURS.
  - b. SURS Obligations: SURS must calculate an accelerated pension benefit payment amount for each eligible person and offer him or

her the opportunity to accept the Tier II automatic annual increase in retirement<sup>9</sup> in exchange for an accelerated pension benefit payment.<sup>10</sup>

- c. **Other Requirements:** The accelerated pension benefit payment must be rolled into another retirement plan or an IRC-qualified account. If a Tier I member who has received an accelerated pension benefit payment subsequently returns to active service under SURS, then the calculation of any future automatic annual increase in retirement annuity must be calculated under the Tier II formula. The accelerated pension benefit payment cannot be repaid to SURS.

#### **D. SB 3073 – Accelerated Pension Benefit Payment Option**

1. **The Bill:** SB 3073 was filed on February 15, 2018 and seeks to amend the Illinois Pension Code.
2. **Status:** SB 3073 was assigned to Licensed Activities and Pension in the Senate on February 21, 2018. Senate Committee Amendment No. 1 was filed on March 9, 2018 and has also been referred to Licensed Activities and Pensions.
3. **Proposed Changes:** SB 3073 creates an accelerated pension benefit payment option for the first 10% of eligible SURS members each year.
  - a. **Eligible SURS Members:** An eligible SURS individual is has terminated service, accrued the necessary service credit for retirement, has not received a retirement annuity from SURS, does not have a QILDRO in effect against him or her under SURS, and is not a participant in the Self-Managed Plan.
  - b. **SURS Obligations:** By January 1, 2019, and annually thereafter, SURS must calculate the net present value of pension benefits for each eligible person. SURS must offer each eligible person the opportunity to irrevocably elect to receive an accelerated pension benefit payment equal to 70% of the net present value of his or her pension benefits in lieu of receiving any pension benefit from SURS.

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<sup>9</sup> The annual increase in retirement is equal to the lesser of 3% or half of the percentage increase in CPI-U, simple interest, beginning on the January 1 occurring or after the later of age 67 or the first anniversary of retirement.

<sup>10</sup> The accelerated pension benefit payment is a lump-sum payment equal to 70% of the difference of the present value of the automatic annual increases on the Tier I member's retirement annuity under the Tier I formula and the present value of the automatic annual increases on the Tier I member's retirement annuity under the Tier II formula.

c. Other Provisions:

- i. The accelerated pension benefit payment must be rolled into another retirement plan or an IRC-qualified account.
- iii. Upon receipt of an accelerated pension benefit payment, credits and creditable service under SURS are terminated.
- iii. If the member subsequently returns to active service under SURS, then any subsequent pension benefits are based on the credits and creditable service accrued after the return to active service. The accelerated pension benefit payment cannot be repaid to SURS and previously terminated credits and creditable service cannot be reinstated under SURS. A SURS member who receives an accelerated pension benefit payment will still receive any applicable retiree health insurance benefits.

**III. PENDING LEGISLATION REGARDING THE COLLEGE INSURANCE PROGRAM**

**A. HB 5404 – Governor’s Introduced FY 2019 Budget<sup>11</sup>**

1. The Bill: HB 5404 was filed on February 16, 2018 and seeks to make appropriations for the ordinary and contingent expenses of SURS for the fiscal year beginning July 1, 2018.
2. Status: HB 5404 was referred to the House Rules Committee on February 16, 2018.
3. Proposed Changes: HB 5404 appropriates \$1,554,498,000 for the annual required state contribution to SURS for FY 2019. Of this amount, \$1,414,498,000 is appropriated from the General Revenue Fund, and \$140,000,000 is appropriated from the State Pensions Fund. The certified fiscal year 2019 state contribution to SURS is \$1,655,154,000.

HB 5404 also appropriates \$0 from the Education Assistance Fund for the state contribution to the College Insurance Program (“CIP”) for fiscal year 2019.

**B. SB 3046 – College Insurance Program Opt-Out**

1. The Bill: SB 3046 was filed on February 15, 2018 and seeks to amend the State Employee Group Insurance Act of 1971.
2. Status: SB 3046 was placed on the calendar order for its second reading on March 13, 2018.
3. Proposed Changes: SB 3046 authorizes eligible benefit recipients and

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<sup>11</sup> HB 5404 is identical to SB 3382 of the 100th General Assembly.

dependent beneficiaries to elect not to participate in the CIP.

- a. Eligibility: To be eligible for the election not to participate under SB 3046, the benefit recipient or dependent beneficiary must be or have been enrolled in CIP before the legislation's effective date.
- b. CIP Open Enrollment: SB 3046 requires the community college benefit recipient to elect not to participate during his or her annual open enrollment period.<sup>12</sup>
  - i. In order to opt-out, community college benefit recipients must furnish proof of health benefit coverage from a source other than the Department of Central Management Services.
  - ii. A community college benefit recipient or a community college dependent beneficiary may re-enroll in CIP during any annual open enrollment period, without evidence of insurability.
  - iii. Community college benefit recipients who elect not to participate in CIP must be furnished with a written explanation of the requirements and limitations for the election not to participate in CIP and for re-enrolling in CIP.

#### **IV. PENDING LEGISLATION REGARDING OTHER SURS ISSUES**

##### **A. HB 5138 – Governor's Salary Rule FTE Elimination**

1. The Bill: HB 5138 was filed on February 15, 2018 and seeks to amend the Illinois Pension Code.
2. Status: HB 5138 was referred to the House Rules Committee on February 16, 2018.
3. Proposed Changes: HB 5138 eliminates the requirement that the governor's salary rule applies to a participant's earnings as determined on a full-time equivalent basis.<sup>13</sup> HB 5138 also provides that only the pensionable earnings received by the participant can be used when determining whether a participant's earnings exceed the amount of salary

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<sup>12</sup> Currently, a community college benefit recipient or a community college dependent beneficiary can opt-out of CIP at any time. Once a community college benefit recipient or a community college dependent beneficiary elects not to participate in CIP, he or she cannot re-enroll in CIP, unless: (1) he or she experiences involuntary termination of his or her health insurance coverage; or (2) he or she turns 65 years of age.

<sup>13</sup> Currently, if a participant's earnings (on an FTE basis) exceed the amount of salary set for the governor, then his/her employer must pay the employer's normal cost on the portion of the participant's earnings in excess of the governor's salary to SURS.

set for the governor.

**B. HB 0669 – Local Control of Benefits**

1. The Bill: HB 0669 was filed on January 25, 2017 and seeks to amend the Illinois Pension Code.
2. Status: HB 0669 has been assigned to the Personnel & Pensions Committee and is scheduled for hearing on April 12, 2018 at 11:00 a.m.
3. Proposed Changes: HB 0669 authorizes the board of trustees of a community college district that is covered under SURS to provide an alternative retirement plan, either in addition to or in lieu of the existing retirement plans under SURS for its eligible new employees.
  - a. An “alternative retirement plan” may include a defined benefit component, defined contribution component, and may include disability of survivor benefits and any other benefits that are permitted under federal law.
  - b. The alternative retirement plan is not required to provide any minimum level of benefits or any benefits whatsoever, other than mandatory Social Security coverage, if applicable.
  - c. Service credit under the alternative retirement plan cannot be transferred to any other pension fund or retirement system and cannot be used under the Retirement Systems Reciprocal Act.
  - d. The alternative retirement plan does not need to comply with any mandatory provisions of the existing retirement plans.
  - e. The alternative retirement plan must be funded with contributions from that community college district and its employees who participate in the alternative retirement plan. In no event may the community college district in any way diminish or impair the rights or benefits of participants in the existing retirement plan.
4. Affected Individuals: The alternative retirement plan only applies to individuals who have not participated in existing plans under SURS.
5. Continuing SURS Obligations: Providing an alternative retirement plan does not release the community college district from the obligation of continuing to participate in SURS with regard to participants in the existing retirement plans.

**C. HB 5674 – State-Funded Retirement Systems Annuitant Database**

1. The Bill: HB 5674 was filed on February 16, 2018 and seeks to amend the Illinois Pension Code.

2. Status: HB 5674 was referred to the House Rules Committee on February 16, 2018.
3. Proposed Changes: HB 5674 requires that, by July 1, 2019, each state-funded retirement system establish and post on its website a searchable database<sup>14</sup> of all individuals receiving an annuity from the System and the monthly amount paid to that individual, to be updated on a monthly basis.

**D. HB4371 – State Serial Long Term Pension Obligations**

1. The Bill: HB 4371 was filed on January 30, 2018 and seeks to amend the General Obligation Bond Act.
2. Status: HB 4371 was referred to the House Rules Committee on January 30, 2018.
3. Proposed Changes: HB 4371 authorizes the issuance of an additional \$107,420,000,000 in State Serial Long Term Pension Obligation Bonds. It also amends the State Pension Funds Continuing Appropriation Act to create a continuing appropriation for payments on those Bonds and amends the State Finance Act to create the State Pension Serial Long Term Obligation Bond Fund.

**E. HB 4684 – SURS Comptroller Intercept<sup>15</sup>**

1. The Bill: HB 4684 was filed on February 7, 2018 and seeks to amend the Illinois Pension Code.
2. Status: HB 4684 was referred to Assignments in the Senate on March 9, 2018.
3. Proposed Changes: HB 4684 enhances SURS' ability to obtain delinquent employer payments by intercepting them through the State Comptroller and/or the county treasurer for the county in which the employer is located.<sup>16</sup>

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<sup>14</sup> No database can include the name of an annuitant under the age of 18 or any identifying information other than the annuitant's name and the amount of the annuity paid to him or her each month.

<sup>15</sup> An identical bill, SB 2954, has been introduced in the Senate. On March 1, 2018, SB 2954 was placed on the calendar order of second reading for March 13, 2018.

<sup>16</sup> Currently, SURS has the ability to obtain delinquent employer payments through the state Comptroller under the return-to-work law for affected annuitants and under legal requirements that employers provide information necessary for the administration of the System and employer audits.



## Community College Funds – Lawful Expenditures and Practical Considerations

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### I. GENERAL PRINCIPLES OF FUND ACCOUNTING

- A. Financial Planning – Financial Planning for current and future operation of community colleges shall provide for both a sound educational program and prudent use of public funds. 23 Ill. Adm. Code 1501.502.
- B. Community College Funds – Illinois Community College Board (“ICCB”) fund accounting regulations require the use of funds that “shall be used for publicly reporting community college financial transactions.” 23 Ill. Adm. Code 1501.511(a).
- C. Annual Audit – Colleges shall prepare and file an annual audit that shall contain financial statements of the funds prescribed by Section 1501.511 of the ICCB regulations. 805 ILCS 3/22.1; 23 Ill. Adm. Code 1501.511(a). The audit shall be filed with ICCB on or before December 30 of each year. *Id.*

### II. ICCB REQUIRED COMMUNITY COLLEGE FUNDS

- A. Legal Authority for Funds – Specific community college funds, and the permitted uses of monies in these funds, are established through the Illinois Public Community College Act (110 ILCS 805/1, *et seq.*), ICCB regulations, and other statutes applicable to public bodies.
- B. Operating Funds – The Operating Funds consist of the Education Fund; the Operations, Building, and Maintenance Fund; and the Public Building Commission Operation and Maintenance Fund. 23 Ill. Adm. Code 1501.511.
  - i. Education Fund (IBBC Fund No. 1) –
    - 1. Authority - The petition filed with ICCB to establish a community college shall “set forth the maximum tax rates for educational purposes” which shall not exceed 75 cents per \$100 of equalized assessed valuation. 110 ILCS 805/3-1(4).
    - 2. Permitted Uses – “Educational purposes” include the cost of instructional, administrative, and professional salaries; supplies and moveable equipment; library books and materials; maintenance of instructional and administrative equipment; and other costs pertaining to the educational programs of the college. 110 ILCS 805/3-1(4); ICCB *Fiscal Management Manual*, July 2016, p. 3.<sup>1</sup>

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<sup>1</sup> ICCB’s Executive Director has statutory authority to develop and promulgate manuals for the purpose of administering ICCB rules. See 23 Ill. Adm. Code 1501.104.

ii. Operations and Maintenance Fund (IBBC Fund No. 2) –

1. Authority – Any sum expended or obligation incurred for the operation and maintenance of buildings or property “shall be paid from the tax levied for operation and maintenance of facilities purposes and the purchase of college grounds.” 110 ILCS 805/3-20.3. The tax rate for this fund shall not exceed 10 cents per \$100 of equalized assessed valuation of the property in the district. 110 ILCS 805/3-1(4).

2. Permitted Uses –

a. Improvements, maintenance, and repair of college buildings and property, including the cost of rent for buildings and property; installation, repair, and maintenance of any fixtures; interior decorating; and premiums for insurance on college buildings and fixtures. 110 ILCS 805/3-20.3.

b. If approved by board resolution, the college may also use this fund for the payment of all salaries of janitors, engineers, and custodial employees; utility costs including fuel, lights, gas, water, and telephone service; custodial supplies and equipment; and the cost of professional surveys. *Id.*

iii. Public Building Commission Operation and Maintenance Fund (ICCB Fund No. 15) – Fund to record the cost of maintaining and operating public building commission property pursuant to agreement with the commission. 23 Ill. Adm. Code 1501.511(a)(1)(C). However, the Public Building Commission Act was amended in 1994<sup>2</sup> so as not to apply to community colleges in counties with a population of less than 3,000,000, so maintenance of a public commission operation and maintenance fund is limited to agreements existing before 1994 for many colleges.

C. Non-Operating Funds -

i. Operations and Maintenance Fund (Restricted) (ICCB Fund No. 3) – Fund consists of monies that the college levies for purchase of sites and for building purposes. Funds may not accumulate to an amount greater than 5 percent of equalized assessed valuation of the district. 110 ILCS 805/3-14.

Monies received from Capital Renewal Grants shall be included in this fund. 23 Ill. Adm. Code 1501.516(c). “Building purposes” for Capital Renewal Grant purposes include architectural, engineering, and other construction services for building acquisition, erection, alteration, or expansion of college facilities. Such grant funds cannot be used to pay for land or buildings intended for staff housing, dormitories, or for athletic

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<sup>2</sup> P.A. 88-304, effective January 1, 1994.

exhibitions or games for which the general public is charged admission. 110 ILCS 805/5-2.

- ii. Bond and Interest Fund (ICCB Fund No. 4) – Fund consists of taxes levied to pay the principal and interest on bonds. See 110 ILCS 805/7-25. The debt service for each bond must be accounted for with its own self-balancing accounts within the fund. 23 Ill. Adm. Code 1501.511(a)(5).
- iii. Auxillary Enterprises Fund (ICCB Fund No. 5) – Fund consists of fees charged to students and staff for activities and services. The college has control of these monies. Each activity or service must be accounted for separately with its own self-balancing account. Examples of activities or services which may be paid for out of this fund include food services, student stores, and intercollegiate athletics. 23 Ill. Adm. Code 1501.511(a)(9); ICCB *Fiscal Management Manual*, July 2016, p. 5.
- iv. Restricted Purposes Fund (ICCB Fund No. 6) – Fund consists of monies that have external restrictions on their use. 23 Ill. Adm. Code 1501.511(a)(2). External restrictions include requirements in grants or contracts specifying or limiting the use of the monies. Each restricted source of revenue in this fund must be accounted for separately with its own self-balancing account. Special Initiative Grants are accounted for in restricted purpose accounts. 23 Ill. Adm. Code 1501.519(b).
- v. Working Cash Fund (ICCB Fund No. 7) – If approved by board resolution, the college may “establish a fund to be known as a ‘working cash fund’ which shall be maintained and administered for the purpose of enabling the board to have in its treasury at all times sufficient money to meet demands thereon for ordinary and necessary expenditures for all community college purposes.” 110 ILCS 805/3-33.1. The fund is used to account for the proceeds from working cash bonds. Working Cash Fund monies may be transferred temporarily to other funds to be used as a source of working capital. 23 Ill. Adm. Code 1501.511(a)(10); ICCB *Fiscal Management Manual*, July 2016, p. 5.
- vi. General Fixed Assets Account Group (ICCB Fund No. 8) – Group of accounts used to record the cost and value of plant assets and is supported by detailed inventory records. 23 Ill. Adm. Code 1501.511(a)(12); ICCB *Fiscal Management Manual*, July 2016, p. 5.
- vii. General Long-Term Debt Account Group (ICCB Fund No. 9) – Group of accounts used to record liabilities that are payable beyond the current fiscal year. 23 Ill. Adm. Code 1501.511(a)(13); ICCB *Fiscal Management Manual*, July 2016, p. 6.
- viii. Trust and Agency Fund (ICCB Fund No. 10) – Fund consists of monies other public or private entities that the college holds in trust as a custodian or fiscal agent. 23 Ill. Adm. Code 1501.511(a)(11); 110 ILCS 805/2-12(e). Each entity’s monies must be accounted for separately with its own self-balancing account. ICCB *Fiscal Management Manual*, July 2016, p. 6.

- ix. Audit Fund (ICCB Fund No. 11) – The Governmental Account Audit Act authorizes colleges to levy a tax for auditing expenses in an amount that will not require extension of such tax at a rate in excess of 5 cents per \$100 of equalized assessed valuation of the property in the district. 50 ILCS 310/9. Monies in this fund shall be used only for the payment of auditing expenses, including payments to the auditing firm appointed by the college board. 110 ILCS 805/3-22.1; 23 Ill. Adm. Code 1501.511(a)(3).
- x. Liability, Protection, and Settlement Fund (ICCB Fund No. 12) – The Local Governmental and Governmental Employees Tort Immunity Act authorizes colleges to levy a tax that will produce a sum sufficient to pay the costs of insurance and insurance-related expenses, principal and interest for bonds issued under Section 5 of the Tort Immunity Act, judgments and settlements arising from tort liability, and risk management programs. 745 ILCS 10/9-107(b). Colleges may also use these funds to pay for the cost of participation in the federal Medicare and Social Security programs. 40 ILCS 4/21-110.1; 23 Ill. Adm. Code 1501.511(a)(4). Monies in this fund, including any interest on such funds, shall be used only for the expenses specified above and authorized in the statute, and shall not be used for expenses more properly paid out of the operating expenses.<sup>3</sup> 745 ILCS 10/9-107.
- xi. Building Bond Proceeds Fund (ICCB Fund No. 13) – Fund consists of proceeds from construction bonds issued pursuant to Sections 3A-1, 7-25, 7-26, or 7-27 of the Community College Act. The proceeds are used to pay the costs to acquire, erect, construct, repair, or furnish or equip college sites, buildings, athletic fields, or recreation grounds for college purposes. Each bond must be accounted for separately with its own self-balancing account. 23 Ill. Adm. Code 1501.511(a)(8).
- xii. Public Building Commission Rental Fund (ICCB Fund No. 14) – Fund to pay any annual rent the college owes for a lease of a property owned by the public building commission. 50 ILCS 20/18. However, the Public Building Commission Act was amended in 1994 to not apply to community colleges in counties with a population of less than 3,000,000, so maintenance of a public building commission rental fund is limited for most colleges to agreements existing before 1994.

### III. PERMISSIBLE FUND TRANSFERS

- A. Intrafund Transfers – Colleges may make transfers between the various items in any fund so long as the aggregate amount of the transfers does not exceed 10% of the total of such fund set forth in the budget. 110 ILCS 805/3-20.1.
- B. Interfund Loans –
  - i. General Interfund Loans – Pursuant to board approval, the college treasurer may make interfund loans from any fund to any other fund.

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<sup>3</sup> HB 04667 currently pending in the General Assembly seeks to amend Section 9-107 of the Tort Immunity Act to allow public bodies to use the Liability, Protection, and Settlement Fund to pay the cost of funding health or medical insurance premiums or health savings plans.

However, each such loan must be repaid and retransferred to the proper fund within one year. 110 ILCS 805/3-34.

- ii. Loans from Working Cash Fund - If approved by board resolution, the college may transfer monies from the Working Cash Fund to the Operations and Maintenance Fund or the Education Fund. 110 ILCS 805/3-33.5 and 3-33.6. The loans must be repaid to the Working Cash Fund upon collection of anticipated taxes or anticipated receipt of monies from other sources such as federal or state government, after the payment of any outstanding warrants or notes. 110 ILCS 805/3-33.5.

C. Permanent Interfund Transfers –

- i. Restrictions on Permanent Interfund Transfers– Absent specific statutory authority, public monies cannot be transferred permanently from one fund to another. ICCB *Fiscal Management Manual*, July 2016, p. 43. Further, many of the specific funds have statutory limitations requiring that the funds received from that levy only be used for the specific statutorily authorized purpose.
- ii. Permanent Transfers to “Accounting Funds” - ICCB *Fiscal Management Manual* correctly states that while many funds are statutorily authorized and required, other funds “have been established that are more specific due to either the source of funds or the scope of the expenditures.” *Id.* at p. 44. Transfers from the operating funds to these “accounting funds” may be permissible so long as the funds hold monies raised for the same purpose. For example, permanent transfers from the Education Fund to the Auxiliary Enterprises Fund or the Restricted Purposes Fund may be allowed, or transfers from the Operations and Maintenance Fund to the Operation and Maintenance Fund (Restricted) or the Public Building Commission Operation and Maintenance Fund. Colleges should consult with their legal counsel before making any such permanent transfers.
- iii. Permanent Residual Equity Transfers – Section 3-21 of the Community College Act states:

Notwithstanding any provision of this Article to the contrary, when bonds are issued by any district and the purposes for which such bonds have been issued have been accomplished and paid for in full and there remains funds on hand in such *bond and interest account*, the board by resolution may transfer such excess to the fund of the district which bears the nearest relation to the purpose for which the bonds from which such excess funds arose were issued. 110 ILCS 805/3-21 (*emphasis added*).

The use of the phrase “bond and interest account” is ambiguous as the Bond and Interest Fund (ICCB Fund No. 4) holds taxes levied to pay the principal and interest of bond payments. Conversely, the Building Bond Proceeds Fund or the Operations and Maintenance (Restricted) Fund may have “funds on hand” from the bonds after the construction projects funded

by the bonds are completed under budget. It is unclear as to whether Section 3-21 allows any excess proceeds from the bonds, rather than excess proceeds from the taxes to service the debt, to be transferred to another account once the project is completed. Colleges should consult with their legal counsel before making any such permanent transfers.

- iv. Permanent Transfer of Interest from Working Cash Fund – Upon board resolution, monies earned as interest from the investment of the Working Cash Fund, or part thereof, may be transferred permanently to the Education or Operation and Maintenance Funds without any requirement for repayment. 110 ILCS 805/3-33.6.

#### IV. **LAWFUL USE OF TORT FUND REVENUE -**

- A. Authorized Use of Tort Funds for Risk Management – Pursuant to Section 9-107(b) of the Tort Immunity Act, monies in the Liability, Protection, and Settlement Fund may be used to pay the cost of risk management programs.
- B. Use of Tort Funds is Strictly Construed – Section 9-107(a) limits the use of Tort Funds:

Notwithstanding the extraordinary nature of the tax authorized by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.

Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.

- C. In re Objections to Tax Levies of Freeport School District 150, et al. - The general issue before the court was whether various taxing districts' expenditures of tort levies were authorized under the Tort Immunity Act.
  - i. Employee Salaries – Employees such as bus drivers, food service workers, administrators, nurses, and faculty cannot be paid salary from the Tort Fund if no responsibilities above and beyond their ordinary job duties are assigned to the personnel, even if the employees are referenced in the taxing districts' risk management policy. However, court did find that a school district's superintendent was performing duties pursuant to a risk management program, and thus the superintendent's salary could be paid partially through the Tort Fund. *In re Objections to Tax Levies of Freeport S.D. 150*, 372 Ill. App. 3d 562, 583.
  - ii. Permissible Expenses – Expenses for “educational, inspectional, or supervisory services directly related to loss prevention and loss reduction” can be paid through the Tort Fund. *Id.*, 372 Ill. App. 3d at 587 (*emphasis*

*added*). The court found that goods for loss prevention, such as campus security software, could not be paid out of Tort funds. Conversely, services such OSHA training and ergonomics trainings were covered by the Tort Immunity Act.