

Robbins Schwartz

SURS Legislation Update

Presented By: Joseph J. Perkoski

ICCCFO Spring Conference

April 18, 2018

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.

NEW PUBLIC ACTS

- » A. Trailer Bill – Tier Clarification
- » B. Return to Work for Affected Annuitants
- » C. Expatriated Entities
- » D. Survivors Felony Forfeiture

NEW PUBLIC ACTS

» A. Trailer Bill – Tier Clarification (Public Act 100-0563)

- › The Act: Public Act 100-0563 was signed into law by Governor Rauner on December 8, 2017 and took effect that same day.
- › 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.¹

¹Pursuant 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.

NEW PUBLIC ACTS

» B. Return to Work (Public Act 100-0556)

- › The Act: Public Act 100-0556 was signed into law by Governor Rauner on December 8, 2017 and took effect that same day.
- › Background: Public Act 100-0556 builds upon the return-to-work regulations established under Public Acts 97-0968 and 98-1144.
- › 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 Act 98-0114 to an expanded group of affected annuitants.

RETURN TO WORK IN PRACTICE

- » **Robbins Schwartz recently achieved an important victory regarding SURS return to work regulations.**
 - › In November 2014, the Oakton Community College 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.
 - › 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.

RETURN TO WORK IN PRACTICE

- › 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.
- › 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".

NEW PUBLIC ACTS

» C. Expatriated Entities (Public Act 100-0551)

- › 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.
- › Prohibition on Investing in Expatriated Entities: Public Act 100-0551 prohibits retirement systems from investing in expatriated entities. Additionally, by April 1st of each year, retirement systems must report to the Illinois Investment Policy Board information pertaining to their shareholder activism and its impact.

NEW PUBLIC ACTS

» D. **Survivors Felony Forfeiture (Public Act 100-0334)**

- › The Act: Public Act 100-0334 was signed into law by Governor Rauner on August 25, 2017 and took effect that same day.
- › 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.
- › Affected Group: Public Act 100-0334 applies to individuals who first became SURS participants on or after August 25, 2017.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » A. HB 4027 – Pension Reform
- » B. HB 4839 – Pension Reform
- » C. HB 5472 – Accelerated Pension Benefit Payment Option
- » D. SB 3073 – Accelerated Pension Benefit Payment Option

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

» A. HB 4027 – Pension Reform

- › The Bill: HB 4027 was filed on March 24, 2017 and seeks to amend the Illinois Pension Code.
- › Status: HB 4027 was re-referred to the House Rules Committee on January 3, 2018.
- › 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- › Defined Benefit Portion of Hybrid Plan: Under the defined benefit portion of the hybrid plan proposed by HB 4027:
 - FAS equals the average monthly (or annual) salary during the period of service where were the highest during the last 120 months (or 10 years) of service.
 - Pensionable earnings are capped at the federal Social Security Wage Base.
 - Retirement annuities are calculated using a new following formula.
 - Automatic annual increases are applied beginning one year after retirement, calculated at $\frac{1}{2}$ of the percentage increase in the CPI-W.
 - 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.
 - 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- › Defined Contribution Portion of Hybrid Plan: Under the defined contribution portion of the hybrid plan proposed by HB 4027:
 - Employee contributions are equal to a minimum of 4% of salary.
 - 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.
 - The participant vests in employer contributions when they are paid into his or her account.
 - The plan must provide a variety of investment options and a variety of options for payouts to retirees and their survivors.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Future Benefits: Future benefits under HB 4027's 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.

- » Tier I Offer and Consideration Pension Reform: HB 4027 requires that each Tier I employee elects one of two options:
 - › 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

 - › To keep the current Tier I automatic annual increase in retirement (3% compounded, beginning the January after retirement).

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Accelerated Pension Benefit Payment Option: HB 4027 creates an accelerated pension benefit payment option for the first 10% of eligible SURS members each year.
 - › 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.
 - › Other Requirements: The payment must be rolled into another retirement plan or account qualified under the IRC and, upon receipt of an accelerated pension benefit payment, credit and creditable service under SURS are terminated. In addition:
 - 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 applicable retiree health insurance benefits

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » 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.
 - › 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.
 - › Participants in the defined contribution plan pay employee contributions at the same rate as other participants in SURS.
 - › The defined contribution plan requires 5 years of service in order for the participant to vest in state contributions.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » State Funding Changes: HB 4027 makes three changes to the funding formula for SURS:
 - › 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;
 - › 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
 - › It requires that state contributions for the fiscal years 2018 and 2019 be recertified based on changes made by the legislation.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » 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 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.
 - › Earnings increases under contracts or collective bargaining agreements entered into, amended, or renewed before the effective date of the legislation are excluded from this provision.
 - › 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

» B. HB 4839 – Pension Reform¹

- › The Bill: HB 4839 was filed on February 14, 2018 and seeks to amend the Illinois Pension Code.
- › Status: HB 4839 was assigned to the House Personnel & Pensions Committee on March 21, 2018.

¹Note that many of the provisions in HB 4829 mirror those in HB 4027.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

» 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.

» Employee Non-Participation in SURS: HB 4839 provides that a person is not required to participate in SURS.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Tier III Defined Contribution Plan: HB 4839 requires SURS to prepare and implement a Tier III defined contribution plan by July 1, 2019.
 - › 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 participate in the Tier III defined contribution plan.
 - › 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.
 - › 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).
 - › Tier III participants must have one year of service credit in the defined contribution plan to vest in state contributions.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Accelerated Pension Benefit Payment Option:¹ 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.
 - › 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.
 - › Other Provisions: The accelerated pension benefit payment must be rolled into another retirement plan or an IRC-qualified account and upon receipt of an accelerated pension benefit payment, credits and creditable service under SURS are terminated. In addition, the accelerated pension benefit payment cannot be repaid to SURS.

¹The accelerated pension benefit payment option under HB 4829 closely mirrors the proposed accelerated pension benefit payment option under HB 4027.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » 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.

- » 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.

 - › 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

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

- › The Bill: HB 5472 was filed on February 16, 2018 and seeks to amend the Illinois Pension Code.
- › Status: HB 5472 was referred to the House Rules Committee on February 16, 2018.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Proposed Changes: HB 5472 creates an accelerated pension benefit payment option for retirement-eligible Tier I members.
 - › 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.
 - › 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

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

- › The Bill: SB 3073 was filed on February 15, 2018 and seeks to amend the Illinois Pension Code.
- › 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.

PENDING LEGISLATION REGARDING OPTIONAL HYBRID PLANS AND ACCELERATED BENEFIT PAYMENT OPTIONS

- » Proposed Changes: SB 3073 creates an accelerated pension benefit payment option for the first 10% of eligible SURS members each year.
 - › 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.
 - › Other Provisions: The payment must be rolled into another retirement plan or an IRC-qualified account and, upon receipt of an accelerated pension benefit payment, credits 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.
 - 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.

PENDING LEGISLATION REGARDING THE COLLEGE INSURANCE PROGRAM

- » A. HB 5404 – Governor's Introduced FY 2018 Budget
- » B. SB 3046 – College Insurance Program Opt-Out

PENDING LEGISLATION REGARDING THE COLLEGE INSURANCE PROGRAM

» A. HB 5404 – Governor’s Introduced FY 2018 Budget¹

- › 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.
- › Status: HB 5404 was referred to the House Rules Committee on 02/06/2018.
- › 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 for fiscal year 2019.

¹HB 5404 is identical to SB 3382 of the 100th General Assembly.

PENDING LEGISLATION REGARDING THE COLLEGE INSURANCE PROGRAM

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

- › The Bill: SB 3046 was filed on February 15, 2018 and seeks to amend the State Employee Group Insurance Act of 1971.
- › Status: SB 3046 was placed on the calendar order for its second reading on March 13, 2018.

PENDING LEGISLATION REGARDING THE COLLEGE INSURANCE PROGRAM

- » Proposed Changes: SB 3046 authorizes eligible benefit recipients and dependent beneficiaries to elect not to participate in the CIP.
 - › 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.
 - › CIP Open Enrollment: SB 3046 requires the community college benefit recipient to elect not to participate during his or her annual open enrollment period.¹
 - 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.
 - 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.

¹Currently, a community college benefit recipient or a community college dependent beneficiary can opt-out of CIP at any time.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

- » A. HB 5138 – Governor’s Salary Rule FTE Elimination
- » B. HB 0669 – Local Control of Benefits
- » C. HB 5674 – State-Funded Retirement Systems
Annuitant Database
- » D. HB4371 – State Serial Long Term Pension
Obligations
- » E. HB 4684 – SURS Comptroller Intercept

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

» A. HB 5138 – Governor’s Salary Rule FTE Elimination

- › The Bill: HB 5138 was filed on February 15, 2018 and seeks to amend the Illinois Pension Code.
- › Status: HB 5138 was referred to the House Rules Committee on February 16, 2018.
- › 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. 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 set for the governor.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

» B. HB 0669 – Local Control of Benefits

- › The Bill: HB 0669 was filed on January 25, 2017 and seeks to amend the Illinois Pension Code.
- › Status: HB 0669 has been assigned to the Personnel & Pensions Committee and was scheduled for hearing on April 12, 2018 at 11:00 a.m.
- › 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.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

- » Affected Individuals: Under HB 0669, the alternative retirement plan only applies to individuals who have not participated in existing plans under SURS.
- » Continuing SURS Obligations: Under HB 0669, 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.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

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

- › The Bill: HB 5674 was filed on February 16, 2018 and seeks to amend the Illinois Pension Code.
- › Status: HB 5674 was referred to the House Rules Committee on February 16, 2018.
- › Proposed Changes: HB 5674 requires that, by July 1, 2019, each state-funded retirement system establish and post on its website a searchable database of all individuals receiving an annuity from the System and the monthly amount paid to that individual, to be updated on a monthly basis.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

» D. **HB 4371 – State Serial Long Term Pension Obligations**

- › The Bill: HB 4371 was filed on January 30, 2018 and seeks to amend the General Obligation Bond Act.
- › Status: HB 4371 was referred to the House Rules Committee on January 30, 2018.
- › 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.

PENDING LEGISLATION REGARDING OTHER SURS ISSUES

» E. **HB 4684 – SURS Comptroller Intercept¹**

- › The Bill: HB 4684 was filed on February 7, 2018 and seeks to amend the Illinois Pension Code.
- › Status: HB 4684 was referred to Assignments in the Senate on March 9, 2018.
- › Proposed Changes: HB 4684 enhances SURS' ability to obtain delinquent employer payments by intercepting them through the State Comptroller and/or the county.

¹Currently, 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.

QUESTIONS?

Robbins Schwartz

Community College Funds – Lawful
Expenditures and Practical
Considerations

Presented By: Matthew Gardner

ICCCFO Spring Conference

April 18, 2018

GENERAL PRINCIPLES OF FUND ACCOUNTING

- » 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.
- » 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).
- » 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.

ICCB REQUIRED COMMUNITY COLLEGE FUNDS

- » 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.
- » 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.

EDUCATION FUND

» Education Fund (IBBC Fund No. 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).
- › 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. 3.¹

¹ 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.

O & M FUND

» Operations and Maintenance Fund (IBBC Fund No. 2)

- › 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).

- › Permitted Uses -
 - 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.
 - 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.

PBC O&M FUND (Limited Applicability)

- » 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 1994² 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.

² 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.

ICCB REQUIRED FUNDS

- » 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 and transfers from O&M operating fund. 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 exhibitions or games for which the general public is charged admission. 110 ILCS 805/5-2.

- » 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).

ICCB REQUIRED FUNDS

- » Auxiliary 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.
- » 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).

ICCB REQUIRED FUNDS

- » 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.
- » 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.

ICCB REQUIRED FUNDS

- » 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.
- » 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.
- » 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).

ICCB REQUIRED FUNDS

- » 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.³ 745 ILCS 10/9-107.

³ 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.

ICCB REQUIRED FUNDS

- » 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).
- » 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.

INTRAFUND TRANSFERS AND INTERFUND LOANS

» 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.

» Interfund Loans -

- › General Interfund Loans – Pursuant to board approval, the college treasurer may make interfund loans from any fund to any other fund. However, each such loan must be repaid and retransferred to the proper fund within one year. 110 ILCS 805/3-34.
- › 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.

PERMANENT INTERFUND TRANSFERS

» Restrictions on Permanent Interfund Transfers –

- › Absent specific statutory authority, public monies cannot be transferred permanently from one fund to another.
- › Many of the ICCB funds have statutory limitations requiring that the funds received from that levy only be used for the specific statutorily authorized purpose. Can such funds be loaned?

» Permanent Transfers to “Accounting Funds” –

- › In contrast to statutory funds established when a levy is made for a specific purpose, “accounting funds’ have been established [and] are more specific due to either the source of funds or the scope of the expenditures.”
- › Transfers from the operating funds to these “accounting funds” may be permissible so long as the funds hold monies raised for the same purpose.
 - Permanent transfers from the Education Fund to the Auxiliary Enterprises Fund or the Restricted Purposes Fund.
 - Permanent 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.

PERMANENT INTERFUND TRANSFERS

» 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.”

› “Bond and interest account” –

- Bond and Interest Fund (ICCB Fund No. 4)? Fund holds taxes levied to pay the principal and interest of bond payments.
- Building Bond Proceeds Fund (ICCB Fund No. 13) or the Operations and Maintenance (Restricted) Fund (ICCB Fund No. 3)? Funds hold monies to be used for construction projects.
- 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

PERMANENT INTERFUND TRANSFERS

- › 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.

LAWFUL USE OF TORT FUND REVENUE AND RISK MANAGEMENT PROGRAMS

- » Section 9-107(b) of the Tort Immunity Act – Pursuant to, monies in the Liability, Protection, and Settlement Fund may be used to pay:
 - › “the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction ... including all costs and reserves directly attributable to being a member of an insurance pool ...”;
 - › principal and interest on bonds issued to create insurance reserve or self-insure;
 - › judgments and settlements arising from tort liability; and
 - › “the cost of risk management programs.”

LAWFUL USE OF TORT FUND REVENUE AND RISK MANAGEMENT PROGRAMS

- » 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.”

FREEPORT – USE OF TORT FUNDS FOR RISK MANAGEMENT

- » *In re Objections to Tax Levies of Freeport School District 150, et al.*, 372 Ill. App. 3d 562 (2d Dist. 2007) –
 - › Issue – Taxpayers filed lawsuit challenging various taxing districts’ expenditures of tort levies under the Tort Immunity Act.
 - › Definition of “Risk Management” – Tort Immunity Act does not define. Court relied on tax objectors’ expert:
 - “Risk management is a process that consists of: identifying and analyzing loss exposures; selecting a technique or combination thereof to be used to handle each exposure; implementing the chosen techniques; and monitoring the decisions made and implementing appropriate changes.”
 - Rejected the notion that risk management includes safety practices engaged in by taxing district employees as part of their normal duties and arising out of “their own common sense.”
 - “Risk management ... is a conscious effort to prevent losses. A safety step can constitute risk management if it is a conscious act based upon an outline of a procedure. Risk management includes training and monitoring the effectiveness of the program. ”

FREERPORT – USE OF TORT FUNDS FOR RISK MANAGEMENT

› 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.
- 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.
 - The plan provided that the superintendent was responsible for developing the risk management program; identifying the various components of the program; delegating the program's responsibilities; continually evaluating the effectiveness of the program; and revising the components and assigned responsibilities as necessary.
 - Court found that the plan's description met the definition of risk management set forth by tax objectors' expert:
 - (i) Identification and analysis of loss exposures;
 - (ii) selection of technique or combination thereof to handle each exposure;
 - (iii) implementing chosen techniques; and
 - (iv) monitoring the decision made and implementing appropriate changes.

FREEMPORT – USE OF TORT FUNDS FOR RISK MANAGEMENT

› Safety and Security-Related Expenditures? –

- Section 9-107(b)(i) – Explicitly authorizes use of funds for “educational, inspectional, or supervisory services directly related to loss prevention and loss reduction”
- Services – Court held that community college’s OSHA training and ergonomics training were authorized expenses even though the community college did not have a risk management program.
 - Court relied on the unambiguous language of Section 9-107(b).
- Goods - The court distinguished campus security software, which “constitutes a good and not a service”, and found that the use of tort funds for the software was not authorized by law.
 - The trial court rejected the use of tort funds for “routine expenses” such as road salt, fire extinguishers, elevators, snow plows, first aid equipment, radios, and door openers. Although that appellate court did not address these items, they are goods and likely would not be authorized under the Freeport court’s ruling.

QUESTIONS?