

2009 Pension Ethics Reform Law

The Illinois Municipal League initiated and won significant public safety pension reforms in 2008. These reforms were enacted into law on August 29, 2008 as P.A. 95-950.

On April 3, 2009, Governor Quinn enacted another significant pension reform bill (SB 364) into law as P.A. 96-0006. These reforms make changes to each of the 17 pension systems within the Illinois Pension Code. Many of these changes were already applicable to the downstate and suburban municipal police and firefighter pension funds as a result of P.A. 95-950.

The IML has published this analysis of the 2009 pension reform law with the intent of informing our members about the provisions within the new law while also identifying how the new law interacts with the IML public safety pension reforms enacted in 2008. The 2009 law took effect on April 3, 2009.

For more information about the 2008 IML Public Safety Pension Reforms (P.A. 95-950), please visit the IML website at www.iml.org and download the document entitled, "Municipal Public Safety Pension Reforms: What Your Municipality Needs to Know About the New Law." This document can be found under "Publications" on the Legislative Website.

Statements of Economic Interest

The 2009 law expands the Illinois Governmental Ethics Act (**5 ILCS 420/4A-101**) to require that pension board members must annually file a statement of economic interest. This expansion includes board members who serve on municipal police and firefighter pension boards. Municipal governments can already require that pension board members file a statement of economic interest. Under the 2009 law, these filings become mandatory for each board member. State law allows local governments to impose more stringent financial disclosure requirements upon their police and firefighter pension board members.

The 2009 law establishes that specific financial interests must be disclosed by police and firefighter pension board members (**5 ILCS 420/4A-102**). These disclosures include: (1) lobbyist disclosures; (2) ownership interests in excess of \$5,000; and (3) entities from which incomes exceeding \$1,200 are derived.

Board members must file a statement of economic interest with each municipality for which they sit as a member on a pension board. The statement of economic interest must also be filed with the county clerk of the county in which the principal office of the unit of local government is located.

On or before February 1 of each year, the chief administrative officer of a municipality is required to certify to the appropriate county clerk a list of names and addresses of each member of a police and firefighter pension fund associated with the municipality.

On or before April 1 of each year, the county clerk is required to send a notice to each police and firefighter pension board member regarding the statement of economic interest filing requirements.

Any pension board member required to file a statement of economic interest who willfully files a false or incomplete statement shall be guilty of a Class A misdemeanor. Official charges for violations by individual board members of police and firefighter pension funds can be brought by the State's Attorney with jurisdiction.

Inclusion Within State Officials and Employees Ethics Act

The definition of "employee" within the State Officials and Employees Ethics Act (**5 ILCS 430**) is expanded to include "appointed or elected commissioners, trustees, directors, or board members of a board of a State agency, including any retirement system or investment board subject to the Illinois Pension Code or any other appointee." This language targets the Illinois State Board of Investments and the five State-funded pension systems. Police and firefighter pension boards became subject to the State Officials and Employees Ethics Act in 2008 with the passage of P.A. 95-950.

Evaluation of Investment Performance

The State Treasurer Act (**15 ILCS 505/16.10**) is amended to establish a working group consisting of representatives from all retirement systems and pension boards under the Illinois Pension Code. The working group will review the performance of investment managers and consultants that provide investment services. The group is tasked with developing uniform standards for cost comparisons of investment services. The group will work in coordination with the Commission on Government Forecasting and Accountability. The working group must draft a report for submission by the Treasurer to the Governor and the General Assembly by January 1, 2011.

Expanded Definition of Fiduciary

The 2009 law expands the definition of "fiduciary" (**40 ILCS 5/1-101.2**) to include any person who, with respect to a pension fund or retirement system, "renders advice on the selection of fiduciaries for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the pension fund or retirement system, or has any authority or responsibility to do so."



The 2008 public safety pension reform law makes it a statutory violation for municipal police and firefighter pension board members to have a relationship with any entity that creates a conflict-of-interest for the pension board member. These outside entities are known as “fiduciaries.” The expanded definition of “fiduciary” in the 2009 law therefore becomes relevant to the 2008 public safety pension reform law in further defining improper relationships.

Definition of Consultant

The Illinois Pension Code makes several references to “consultant” without providing a specific definition. The 2009 law provides the following definition (**40 ILCS 5/1-101.5**):

“Consultant” means any person or entity retained or employed by the board of a retirement system, pension fund, or investment board to make recommendations in developing an investment strategy, assist with finding appropriate investment advisers, or monitor the board’s investments. “Consultant” does not include non-investment related professionals or professionals offering services that are not directly related to the investment of assets, such as legal counsel, actuary, proxy-voting services, services used to track compliance with legal standards, and investment fund of funds where the board has no direct contractual relationship with the investment advisers or partnerships. “Investment adviser” has the meaning ascribed to it in Section 1-101.4.

This definition is applicable to the fiduciary conflict-of-interest provision within the 2008 police and firefighter pension reform law.

Emerging Investment Managers

The statutory change (**40 ILCS 5/1-109.1**) appears to only *encourage* police and firefighter pension funds to utilize more “emerging investment managers.” The police and fire funds are exempted from the specific goals, targets, and reporting requirements established in the new law. Police and firefighter pension funds are required to use emerging investment managers “to the greatest extent feasible within the bounds of financial and fiduciary prudence, and to take affirmative steps to remove any barriers to the full participation in investment opportunities afforded by those retirement systems, pension funds, and investment boards.”

An “emerging investment manager” is defined as “a qualified investment advisor that manages an investment portfolio of at least \$10,000,000 but less than \$10,000,000,000 and is a ‘minority owned business,’ ‘female owned business,’ or ‘business owned by a person with a disability’ as those terms are defined in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act.”

Fiduciary Conflict-of-Interest Restrictions and Penalties

The 2009 law does not affect the police and firefighter pension funds with regard to conflict-of-interest prohibitions that involve an investment transaction with an investment adviser when the pension board member, employee, consultant, or their spouse: (1) has a direct interest in the

income gains, or profits of the investment advisor; or (2) has a relationship with that investment adviser that would result in a pecuniary benefit to the board member, employee, or consultant **(40 ILCS 5/1-110)**. The 2008 public safety pension reform law already imposes these restrictions onto police and firefighter pension boards. The 2009 law does, however, apply similar restrictions to all other retirement systems and pension funds.

The 2009 law does include an additional conflict-of-interest provision **(40 ILCS 5/1-130)** that appears to cover police and firefighter pension funds. The 2009 law provides that no member or employee of a pension board can knowingly have any direct interest in the income, gains, or profits of any investments made on behalf of the pension fund. This provision specifically addresses investment income, whereas the 2008 public safety pension reform law only addressed financial benefits that came directly from a business relationship. In addition, no member or employee of a pension board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from any retirement system or pension fund created under the Illinois Pension Code. Violations are a Class 3 felony. An annuity otherwise provided in accordance with the Illinois Pension Code, or any income, gains, or profits related to any non-controlling interest in any public securities, mutual fund, or other passive investment is not considered a monetary gain on investments.

Investment Advisors and Investment Services

The 2009 law makes several changes regarding the use of investment advisers and investment services **(40 ILCS 5/1-113.14)**. These changes do not affect the police and fire pension boards.

The 2008 public safety pension reform law, however, includes language that limits the duration of a contract to no longer than five years for consulting services retained to assist a pension board in selecting a fiduciary. The 2008 law also includes several disclosure requirements for entities seeking consulting contracts with pension boards. **(40 ILCS 5/1-113.5)**

Investment Transparency

The 2009 law requires that every retirement system and pension fund governed by the Illinois Pension Code is subject to the Illinois Open Meetings Act **(40 ILCS 5/1-113.16)**. All retirement systems and pension funds, with the exception of the suburban and downstate police and fire funds, must maintain an official website, updated at least quarterly with information concerning the investment of funds.

Ethics Training

The 2009 law requires all board members of a retirement system, pension fund, or investment board to attend at least 8 hours of training per year. This includes trustees of police and firefighter pension funds. Each pension board must annually certify that its members received the required training. The certification must be sent to the Division of Insurance of the Department of Financial and Professional Regulation **(40 ILCS 5/1-113.18)**.



Gift Ban Provision

The 2009 law expands the gift ban provisions applicable to police and firefighter pension boards under the 2008 public safety pension reforms to ALL of the pension systems (**40 ILCS 5/1-125**). The 2009 law enumerates the number of allowable exemptions. This change includes those exemptions allowable for police and firefighter pension board trustees. Under the 2008 IML reforms, the following gifts are allowable from a prohibited source: (1) educational materials; and (2) travel expenses for a meeting to discuss pension fund business. Under the 2009 law, these two specific gift categories are prohibited, while the remaining traditional exemptions listed under the Gift Ban Act are allowed. These exemptions can be found within **5 ILCS 430/10-15**.

With the exception of the police and fire pension boards, the expenses for travel or educational missions of a pension board member must be approved by a majority of the board.

Anti-Fraud Provision

The 2009 law makes it a Class 3 felony to knowingly make any false statement, or permit to be falsified any record of a retirement system or pension fund in an attempt to defraud the retirement system or pension fund (**40 ILCS 5/1-135**). The 2008 public safety pension law contains similar language, but imposes a Class A misdemeanor for fraudulent acts. It is unclear how this apparent discrepancy between the penalties will be resolved.

Contingent and Placement Fees

The 2009 law prohibits the retention of a person or entity who attempts to influence the outcome of an investment decision or the procurement of investment advice or services of a pension fund for compensation, contingent in whole or in part upon the decision or procurement. This new provision affects police and firefighter pension funds. A violation of this provision is considered a business offense and brings a fine not to exceed \$10,000. Furthermore, any violation will result in an offender being prohibited from the business of seeking contingent and placement fees for three years (**40 ILCS 5/1-145**).

Pension Board Composition

The 2009 law makes changes to the appointment procedures, composition, and terms of board members of the State Employees' Retirement System, Teachers' Retirement System, State University Retirement System, and Illinois State Board of Investments. The 2009 law also fires the secretary and chief executive officer of the Teachers' Retirement System.

