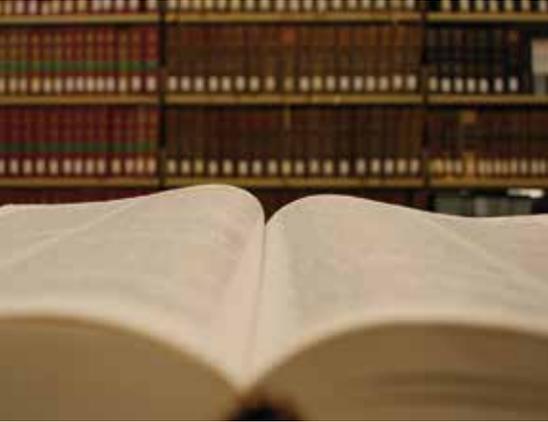


# PENSION POINTERS



## Intercept: A New Tool For Pension Funds To Obtain Proper Funding

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*Editor's Note: Pension Pointers is a column provided for our members who also serve on the Fire Pension Board.*

**D**ownstate Police and Fire Pension Funds who have been underfunded by their Municipalities or Districts have been anxiously awaiting the implementation of the law which will allow pension funds to intercept State monies earmarked for their Municipalities and have them redirected into their police or fire pension funds. A brief history on how we got to this point is appropriate. Illinois law currently requires all downstate police and fire pension funds to be 90% funded by 2040. Prior to January 1, 2011 Illinois law required all downstate police and fire pension funds to be 100% funded by 2033. At the same time the funded ratio was raised, "forced funding" provisions were placed into 40 ILCS 5/3-125 and 40 ILCS 5/4-118 of the Pension Code.

Annual Municipal contributions are to be calculated as a level percentage of payroll under the "projected unit credit actuarial cost method". Illinois law requires Municipal or Districts contributions into pension funds to be based on a certified actuarial valuation report. These reports are currently provided free of charge to each downstate police and fire pension fund from the Illinois Department of Insurance, Public Pension Division. The reports are based upon a review of the Annual Statement, Interrogatories and Audits which each pension fund is required to file with the Illinois Department of Insurance, Public Pension Division no later than 6 months after the close of their fiscal year. Some

pension funds or Municipalities may also obtain a private actuarial valuation report upon which they may base the Municipal or District contributions.

Commencing with fiscal year 2016, if a Municipality or District fails to remit the required Municipal or District contributions within 90 days after payment is due, the pension fund may certify to the State Comptroller any delinquent amounts. The Comptroller must then deliver and deposit to the pension fund the certified amounts or a portion of the amounts from "State funds" owed to the Municipality or District. The statutes provide that intercepts of State funds to the Municipality or District may take place as follows:

1. In fiscal year 2016, one-third of the total amount of any payments of State funds to the Municipality;
2. In fiscal year 2017, two-thirds of the total amount of any payments of State funds to the Municipality;
3. In fiscal year 2018, and each fiscal year thereafter, the total amount of any payments of State funds to the Municipality.

The State Comptroller may not deduct from any payments of State funds to the Municipality or District more than the amount of delinquent payments certified to the State Comptroller by the Fund.

For over the past year the Illinois Department of Insurance, Public Pension Division has been working with the Illinois State Comptroller to develop administrative procedural rules for pension funds to follow in exercising

their rights to intercept monies from Municipalities. These new rules were first established in Vol. 42, Issue 4, of the 2018 Illinois Register of Rules of Governmental Agencies published January 26, 2018. Section 295.300 of the Rules require the Claimant (Pension Fund) to submit a Statement of Notification certifying the amount delinquent has been established through "notice and opportunity" to be heard. The "Statement of Notification" must include the name and FEIN or Governmental Unit Code of the entity to be intercepted; the certified amount delinquent then due and payable to fund; reason why there is an amount due to fund; time period to which the claim is attributable; a description of the type of notification given and opportunity to be heard by the entity to be intercepted; a statement as to outcome of the hearing to establish the claim or a statement that no hearing was requested; and the date of the final determination of the claim.

The Comptroller will not process any remittance until it has received a statement of notification from the pension fund certifying that the amount delinquent has been established through notice and opportunity to be heard. This will require the pension board, acting on behalf of the pension fund, to conduct an administrative hearing with notice to the municipality or district in order to properly certify the underfunded

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*Continued on page 29*

## Pension Pointers

Continued from page 28

amounts. Pension boards will need to obtain records from their Municipal Treasurer certifying the amount of the Municipal contributions received by the Pension Fund for the appropriate fiscal year. In addition, pension boards will need to have as part of its record the certified Actuarial Valuation Report which was tendered to the Municipality or District identifying the minimum requested funding amount. The difference between those two amounts would identify the underfunded amount to be certified to the State Comptroller. Before making any remittance, the Comptroller will review the statement of notification provided by the pension fund to make certain it is in order. The Comptroller will issue a warrant on funds held by the State Treasurer to deposit the appropriate funds into the State Offset Claims Fund. The Comptroller

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will then give notice to the Municipality or District and if no protest is filed after 60 days, the monies will be released to the pension fund. If a protest is raised, the Comptroller has a review process before monies are paid out.

Pension funds who find themselves in a position of underfunding based upon the Municipality or district's failure to properly fund their pension funds pursuant to a certified Actuarial Valuation Report, are encouraged to obtain experienced legal counsel to advise them as to the proper steps which need to be

taken in order to comply fully with the law.

The interception of funds as discussed above should be viewed as a last resort for pension funds. Interception is a new tool available to pension funds. Maintaining open lines of communication between your pension fund and your Municipality or District regarding pension funding issues is extremely important and should be conducted on a regular basis so that both sides can be fully informed on issues regarding funding requirements. ■

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